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ARKANSAS CODE OF 1987 ANNOTATED



VOLUME 20A

2005 Replacement

TITLE 20: PUBLIC HEALTH AND WELFARE (CHAPTERS 1-44)

Prepared by the Editorial Staff of the Publisher

Under the Direction and Supervision of the
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This volume contains legislation enacted by the Arkansas General Assembly through the 2005 Regular Session. Annotations are to the following sources:

Arkansas Supreme Court and Arkansas Court of Appeals Opinions through 2005 Ark. LEXIS 504 (September 22, 2005) and 2005 Ark. App. LEXIS 696 (September 28, 2005).

Federal Supplement through September 28, 2005.

Federal Reporter 3d Series through September 28, 2005.

United States Supreme Court Reports, through September 28, 2005.

Bankruptcy Reporter through September 28, 2005.

Arkansas Law Notes through the 2001 Edition.

Arkansas Law Review through Volume 57, p. 441.

University of Arkansas at Little Rock Law Journal through Volume 26, p. 513.

ALR 6th through Volume 4, p. 599.

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User's Guide

Differences in language, subsection order, punctuation, and other variations in the statute text from legislative acts, supplement pamphlets, and previous versions of the bound volume, are editorial changes made at the direction of the Arkansas Code Commission pursuant to the authority granted in § 1-2-303.

Many of the Arkansas Code's research aids, as well as its organization and other features, are described in the User's Guide, which appears near the beginning of Volume 1 of the Code.

TITLE 20

PUBLIC HEALTH AND WELFARE

(CHAPTERS 45-86 IN VOLUME 20B)

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SUBTITLE 1. GENERAL PROVISIONS**CHAPTER 1****GENERAL PROVISIONS**

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20-2-106. [Repealed.]

Publisher's Notes. Former §§ 20-2-101 — 20-2-103, concerning the Arkansas Commission on Human Resources, were repealed by Acts 1991, No. 343, § 9. The sections were derived from:

20-2-101. Acts 1977, No. 954, § 1; A.S.A. 1947, § 6-1501.

20-2-102. Acts 1977, No. 954, § 2; 1983, No. 752, § 1; A.S.A. 1947, § 6-1502.

20-2-103. Acts 1977, No. 954, § 3; 1983, No. 752, § 2; A.S.A. 1947, § 6-1503.

Acts 1991, No. 343, § 9, provided: "The Arkansas Commission on Human Resources created under Arkansas Code § 20-2-101 is abolished."

Effective Dates. Acts 1995, No. 1017, § 9: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1995 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1995 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace,

health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 229, § 6: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2003 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2003 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2003."

Acts 2005, No. 1405, § 5: July 1, 2005. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2005 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2005 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2005."

20-2-101. Definitions.

As used in this subchapter:

(1) "Commission" means the Arkansas Minority Health Commission; and

(2) "Minority" means black Americans, Hispanic Americans, Asian Americans, and American Indians.

History. Acts 1991, No. 912, § 1.

20-2-102. Creation — Members — Compensation.

(a) There is established the Arkansas Minority Health Commission to consist of twelve (12) members to be appointed as follows:

(1) Four (4) of the general public to be appointed by the Governor, with each of the four (4) congressional districts represented;

(2) Two (2) members to be appointed by the President Pro Tempore of the Senate;

(3) Two (2) members to be appointed by the Speaker of the House of Representatives;

(4) The Director of the Bureau of Alcohol and Drug Abuse Prevention or his or her designee;

(5) The Director of the Division of Aging and Adult Services of the Department of Health and Human Services or his or her designee;

(6) The Director of the Division of Health of the Department of Health and Human Services or his or her designee; and

(7) The Director of the Division of Behavioral Health of the Department of Health and Human Services or his or her designee.

(b) All persons appointed to the commission shall be persons who have actively participated in health issues for minorities or have special knowledge or experience with minority health issues.

(c) The members shall serve staggered two-year terms.

(d)(1) The commission shall meet at least quarterly and at such other times as necessary to carry out its duties under this chapter.

(2) The commission shall elect one (1) of its members as chair and may provide by appropriate adoption of bylaws and rules for the time, place, and manner of calling its meetings.

(e) The commission members shall serve without pay, but those members not employed by the State of Arkansas may receive expense reimbursement in accordance with § 25-16-901 et seq.

(f) The agencies represented on the commission may enter into an agreement to pay appropriate costs of the commission and clerical and support staff.

(g) Any state agency, state-supported hospital, or state medical school shall submit to the commission any information the commission requests that relates to health issues for minorities except for names, addresses, telephone numbers, or any other identifying information.

History. Acts 1991, No. 912, §§ 2, 4, 5; 1997, No. 250, § 176; 2001, No. 1288, § 15.

Publisher's Notes. As to repeal of former section, see note at beginning of chapter.

Amendments. The 2001 amendment deleted "of the Senate" following "members" in (a)(2); and deleted "of the House of Representatives" following "members" in (a)(3).

20-2-103. Powers and duties generally.

The Arkansas Minority Health Commission shall:

(1) Study issues relating to the delivery of and access to health services for minorities in this state;

(2) Identify any gaps in the health service delivery system that particularly affect minorities;

(3) Make recommendations to the relevant agencies and to the General Assembly for improving the delivery of and access to health services for minorities; and

(4) Study and make recommendations as to whether adequate services are available to ensure that future minority health needs will be met.

History. Acts 1991, No. 912, § 3.

Publisher's Notes. As to repeal of for-

mer section, see note at beginning of chapter.

20-2-104. Reimbursement for expenses.

(a) Members of the Arkansas Minority Health Commission may receive expense reimbursement in accordance with § 25-16-901 et seq.

(b) The commission may authorize expense reimbursement for its members performing official duties of the commission by a majority vote of its total membership cast at its first regularly scheduled meeting of each calendar year.

(c) Any expense reimbursement shall not exceed the rate established for state employees in the state travel regulations.

History. Acts 1995, No. 1017, § 3; 1997, No. 250, § 177; 2003, No. 229, § 3.

A.C.R.C. Notes. Acts 1997, No. 53, § 3, which is identical to the 1995 version of this section, provided: "The commission may, by a majority vote of the total membership of the commission, cast at its first regularly scheduled meeting of each calendar year, authorize expense reimbursement for commission members performing official duties of the commission and such

expense reimbursement shall not exceed the rate established for state employees in the state travel regulations."

Publisher's Notes. Former § 20-2-104, concerning the Arkansas Commission on Human Resources, was repealed by Acts 1991, No. 343, § 9. The section was derived from Acts 1977, No. 954, § 4; A.S.A. 1947, § 6-1504.

Amendments. The 2003 amendment added (b) and (c).

20-2-105. Cash fund.

(a) There is created a cash fund entitled "Minority Health Commission Cash Fund" to be used for expenses of the Arkansas Minority Health Commission as appropriated by the General Assembly.

(b) The commission may receive grants and donations made to the agency or amounts received as reimbursement for producing or reproducing literature or reports, which shall be deposited into the State Treasury as cash funds and may be used for reimbursements for expenses of providing seminars or educational activities.

History. Acts 2005, No. 1405, § 2.

Publisher's Notes. Former § 20-2-105, concerning the Arkansas Commission on Human Resources, was repealed

by Acts 1991, No. 343, § 9. The section was derived from Acts 1977, No. 954, § 5; A.S.A. 1947, § 6-1505.

20-2-106. [Repealed.]

Publisher's Notes. This section, concerning the Arkansas Commission on Human Resources, was repealed by Acts

1991, No. 343, § 9. The section was derived from Acts 1977, No. 954, § 5; A.S.A. 1947, § 6-1505.

CHAPTERS 3-5

[Reserved]

SUBTITLE 2. HEALTH AND SAFETY

CHAPTER 6

GENERAL PROVISIONS

[Reserved]

CHAPTER 7

STATE BOARD OF HEALTH — DIVISION OF HEALTH OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS HEALTH DEPARTMENT BUILDING AND LOCAL GRANT ACT.
3. STATE HEALTH DATA CLEARINGHOUSE ACT.
4. DEPARTMENT OF HEALTH PUBLIC HEALTH LABORATORY ACT OF 2003.

Publisher's Notes. The State Board of Health and its functions, powers, and duties were transferred by a type 4 transfer to the Department of Health by Acts 1971, No. 38, § 11. Pursuant to § 25-2-107, governing type 4 transfers, the Governor is required to approve rules and regulations issued by the board and the board's nominee for director.

The Air Conditioning and Heating Con-

tractors Board, created by Acts 1987, No. 704, to work with the Department of Health on a two-year study concerning regulation of air-conditioning and heating contractors, was abolished by Acts 1991, No. 343.

Cross References. Division of industrial hygiene, § 11-5-201 et seq.

Enforcement of narcotic drug law, § 20-64-219.

Food, Drug, and Cosmetic Act, enforcement, § 20-56-222.

Health Services Agency, § 20-8-101 et seq.

State health agencies, generally, § 20-8-101 et seq.

RESEARCH REFERENCES

Am. Jur. 39 Am. Jur. 2d, Health, § 9 et seq.

C.J.S. 39A C.J.S., Health & E, § 9 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

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- 20-7-101. Violations — Penalties.
- 20-7-102. Members — Appointment.
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- 20-7-119. Identification tags and bracelets.
- 20-7-120. No right to enter home or take charge of children.
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- 20-7-123. Fees.
- 20-7-124. Disposition of certain fees.
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- 20-7-126. Payment of overtime for home health employees.
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- 20-7-128. Maintenance fee for breath testing instruments.
- 20-7-129. Reimbursement for certain medical supplies or services.
- 20-7-130. Recovery of expenditures for extraordinary operations.
- 20-7-131. Local control of county or city units of the Division of Health of the Department of Health and Human Services.
- 20-7-132. Guidelines for cleanup of clandestine methamphetamine labs.
- 20-7-133. Child Health Advisory Committee — Creation.
- 20-7-134. Powers and duties.
- 20-7-135. Nutrition and physical activity standards — Implementation.

A.C.R.C. Notes. Acts 1999, No. 1000, §§ 1-4, provided: "Section 1. The General Assembly finds that:

"(1) The number of births to unwed women and to teenage parents has increased in our country and state during the past fifty (50) years;

"(2) There were twelve thousand one hundred and fifty-seven (12,157) unwed

births in Arkansas in 1996, which represent thirty-three point four percent (33.4%) of all births in the state;

"(3) There were four thousand six hundred and fifty-one (4,651) unwed births to teenagers in Arkansas in 1995, which represent thirty-eight point three percent (38.3%) of all unmarried births in the state;

"(4) Unwed births and teenage pregnancy are problems which have tremendous financial and human consequences for present and future generations, and prevention programs can serve as the basis for welfare reform efforts by reducing the number of persons in need of public assistance; and

"(5) A comprehensive program to reduce the number of unwed births and teenage pregnancies, which includes local initiatives developed by community coalitions, should be coordinated at the state level.

"Section 2. (a) The Department of Health shall be designated to coordinate interagency efforts and to serve as the administrative and fiscal agent of the Unwed Birth and Teenage Pregnancy Prevention Program. The program shall involve a multi-faceted approach to the problems associated with unwed births and teenage pregnancies that is cognizant of community needs and values. The department shall receive advice and input regarding the management of the program from both the Unwed Birth Prevention Steering Committee and the Governor's Steering Committee on Abstinence Education. The program shall include, but not be limited to abstinence education initiatives, pregnancy planning, risk factors impacting teen and unwed births, prevention strategies, a comprehensive media campaign, grants to local communities and program evaluation.

"(b) State agencies that provide services to unwed mothers, teenage parents, and teenagers shall cooperate in administering the program with the Department of Health.

"Section 3. Legislative oversight of program activities shall be provided by the House and Senate Committees on Public Health, Welfare and Labor.

"Section 4. The provisions of this act shall automatically expire on July 1, 2001 unless extended by an act of the legislature."

References to "this subchapter" in §§ 20-7-101 — 20-7-130 may not apply to §§ 20-7-131 and 20-7-132, which were enacted subsequently.

Publisher's Notes. Because of the enactment of Subchapter 2 of this chapter by Acts 1989, No. 749, § 1, the existing provisions of this chapter have been designated as Subchapter 1.

Acts 1993, No. 350, § 7, provided: "(a)

All powers, functions and duties heretofore vested in and exercised by the Health Building Commission are hereby transferred to and shall hereafter be vested in the State Board of Health.

"(b) All funds appropriated to and all property, both real and personal, vested in the Health Building Commission are hereby transferred and shall be made available to the State Board of Health.

"(c) The Health Building Commission is hereby abolished."

Preambles. Acts 1979, No. 159, contained a preamble which read: "Whereas, the State of Arkansas has an unacceptably high perinatal morbidity and mortality in comparison with surrounding states and the rest of the United States; and

"Whereas, the State of Arkansas has inadequate hospital facilities to provide specialized care for small, premature, and sick newborns; a lack of trained professionals to staff perinatal units; and other constraints impeding the development of a coordinated statewide perinatal health care system; and

"Whereas, various agencies and departments within state government administer, fund, and otherwise support programs relating to perinatal health care; and

"Whereas, It is imperative to the health and well-being of the citizens that the various agencies and departments involved be administered in the most efficient and effective manner possible to maximize the use of our limited resources;

"Now, therefore ..."

Effective Dates. Acts 1881, No. 85, § 14: effective on passage.

Acts 1895, No. 152, § 5: effective on passage.

Acts 1913, No. 96, § 33: Feb. 25, 1913. Emergency declared.

Acts 1923, No. 92, § 6: Feb. 9, 1923. Emergency clause provided: "This act being necessary for the public peace, health and safety, an emergency is hereby declared and this act shall be in full force and effect from and after its passage and approval by the governor."

Acts 1929, No. 109, § 3: approved Mar. 9, 1929. Emergency clause provided: "In view of the fact that the need for the protection of the public health is imperative and the changes herein contemplated are necessary for a more efficient administration of the State Board of Health, the immediate operation of this act is neces-

sary for the preservation of the public peace, health and safety, and this act shall take effect and be in force and effect from and after its passage.”

Acts 1931, No. 235, § 12: Mar. 27, 1931. Emergency clause provided: “This act being necessary for the health and safety of the State shall take effect and be in full force from and after its passage and approval.”

Acts 1949, No. 302, § 5: Mar. 19, 1949. Emergency clause provided: “It appearing to the Legislature that the membership of the State Board of Health as presently constituted does not adequately give representation to those other professions interested and informed in matters of public health, and it appearing that there be an immediate public need for such representation, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in full force from and after its passage and approval.”

Acts 1953, No. 282, § 3: Mar. 11, 1953. Emergency clause provided: “It is hereby determined by the General Assembly that the law authorizing the employment of an assistant State Health Officer has been inadvertently repealed and that it is essential to the continued operation of the State Health Department that an assistant State Health Officer be authorized, and the passage of this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1959, No. 186, § 5: Mar. 6, 1959. Emergency clause provided: “It appearing to the Legislature that the membership of the State Board of Health as presently constituted does not adequately give representation to those other professions interested and informed in matters of public health, and it appearing that there be an immediate public need for such representation, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in full force from and after its passage and approval.”

Acts 1961, No. 433, § 4: Mar. 15, 1961. Emergency clause provided: “It appearing to the Legislature that the membership of the State Board of Health as presently

constituted does not adequately give representation to those other professions interested and informed in matters of public health, and it appearing that there be an immediate public need for such representation, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in full force from and after its passage and approval.”

Acts 1965, No. 469, § 27: Mar. 20, 1965. Emergency clause provided: “It is hereby found and declared by the General Assembly that the present building is wholly inadequate to house the State Board of Health, the State Health Officer, the State Department of Health and the divisions, units, agencies, officers and employees thereof, with the result that it is impossible to properly and efficiently carry out functions and duties required by law; that because of such inadequacy the State is not having its health and related needs properly taken care of, all of which is to the detriment of the public health, safety and welfare; and that only by the immediate operation of this Act can these conditions be alleviated. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force from and after its passage and approval.”

Acts 1971, No. 204, § 3: Mar. 2, 1971. Emergency clause provided: “The General Assembly having found that one of the major functions of the Board of Health of the State of Arkansas is the inspection of meat and meat products and that the prevention and control of disease in animals is a necessary part of the process of assuring a supply of wholesome meat products and that the presence of a licensed veterinarian on the State Board of Health will contribute greatly to the efficiency and performance of the duties of said Board and that there is an immediate need for the appointment of such licensed veterinarian to the said State Board of Health. An emergency is hereby declared and this Act being necessary for the immediate protection of the public health, safety and welfare shall be in full force and effect immediately upon its passage and approval.”

Acts 1975, No. 383, § 4: Mar. 12, 1975. Emergency clause provided: “It is hereby

declared by the General Assembly that only an immediate operation of this Act can correct inequities and rectify problems created for State Health Board Members engaged in functions and duties required by law and alleviate all troublesome conditions associated therewith. Therefore, an emergency is hereby declared to exist and this Act being necessary to the public peace, health and safety shall take effect upon its passage and approval."

Acts 1977, No. 318, § 3: Mar. 1, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that many of the functions and responsibilities of the Board of Health of the State of Arkansas vitally affect the operation and administration of hospital facilities in this State and that the membership on the State Board of Health of a hospital administrator would enhance the State Board of Health's efficiency and ability to deal with issues affecting hospitals while at the same time insuring that the interests of the hospitals are represented, and that there is an immediate need for the appointment of a hospital administrator to the Board of Health. Therefore, an emergency is hereby declared and this Act being necessary for the immediate protection of the public health, safety and welfare shall be in full force and effect immediately upon its passage and approval."

Acts 1977, No. 889, § 39: July 1, 1977. Emergency clause provided: "It is hereby found and determined by the Seventy-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1977 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1977 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1977."

Acts 1979, No. 159, § 8: Feb. 20, 1979. Emergency clause provided: "Whereas,

this Act is necessary to establish the Advisory Board for Perinatal Health Services and that this Advisory Board immediately begin its work to improve the health and welfare of the citizens, an emergency is hereby declared to exist and this Act shall be in full force and effect from and after its passage."

Acts 1979, No. 198, § 3: Feb. 21, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that there is an immediate need to establish the most efficient possible administrative structure in the Department of Health. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 723, § 6: July 1, 1979. Emergency clause provided: "It is hereby found and determined by the Seventy-Second General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1979, is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1979, could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1979."

Acts 1979, No. 797, § 3: Apr. 10, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law prescribing qualifications of the Assistant Director of the Department of Health is unduly restrictive in that it requires such person to be a licensed physician; that this Act is designed to revise such qualifications to require only that the Assistant Director be knowledgeable in the field of public health and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the

public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1985, No. 718, § 32: July 1, 1985. Emergency clause provided: “It is hereby found and determined by the Seventy-Fifth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1985 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1985 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1985.”

Acts 1987, No. 146, § 4: Mar. 10, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that due to current revenue shortfalls the services offered by the Department of Health to the citizens of this State are threatened; that an equitable method of maintaining these services is to provide for a fee to be paid by those citizens who request the assistance of the State Department of Health; that this Act is designed to provide for the collection of such fees and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1987, No. 399, § 4: Mar. 25, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that due to current revenue shortfalls the services offered by the Department of Health to the citizens of this State are threatened; that an equitable method of maintaining these services is to provide for additional fees to be paid by those citizens who request the assistance of the State Department of Health; that this Act is designed to provide for the collection of additional fees and should be given effect immediately. Therefore, an emergency is

hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1987, No. 677, § 5: Emergency failed to pass. Emergency clause provided: “It is hereby found and determined by the General Assembly that the services provided by the local health units of the State Department of Health are services that are essential to the health and welfare of residents of the various areas of the State; that as a result of recent state budget cuts, funding for the local health units has been reduced significantly and that unless additional funds are provided for support of the local health units, the services provided by the units will be seriously curtailed to the detriment of the health of residents in the various areas of the State; that this Act is designed to permit the State Board of Health to levy nominal charges for client visits to the local health units with such fees to be collected only from those clients who are financially able to pay the fee, with funds derived from such fees to be used exclusively for the support of the Bureau of Community Health Services, to enable them to continue to provide essential health services; that this Act should be given effect at the earliest possible date to enable the State Board of Health to levy and begin collection of the fees authorized herein and to thereby avoid curtailment of services provided by the various local health units. Therefore, an emergency of the public peace, health and safety shall be in full force and effect from and after its passage and approval.” Approved Apr. 7, 1987.

Acts 1987, No. 916, § 40: July 1, 1987. Emergency clause provided: “It is hereby found and determined by the Seventy-Sixth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1987 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1987 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby de-

clared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1987."

Acts 1993, No. 350, §§ 3-6: July 1, 1993.

Acts 1993, No. 350, § 11: Mar. 3, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Department of Health is critically in need of additional space and that, accordingly, the authorization to construct or acquire space enabled by this act, must be obtained as soon as feasible. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 485, § 5: Mar. 12, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the provisions of this Act are immediately necessary due to regulations and requirements of the federal government concerning laboratories which impact public health programs at the Arkansas Department of Health; and that this legislation will permit mid-level professionals to serve patients in public health clinics which will improve the efficiency of clinic operations thereby increasing services to patients. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 270, § 19: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly, that various laws have been enacted since the passage of the Revenue Classification Law which have changed or created various revenues collected by the State, and that this amendment to the Revenue Classification Law is necessary in order to reflect the various taxes, licenses, fees and other revenues levied and collected for the support of and use by State Government as they currently exist and from which appropriations which become effective July 1, 1995 have been made by the Eightieth General Assembly. Therefore, an emergency is hereby declared to exist and this Act being

necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995."

Acts 1995 (1st Ex. Sess.), No. 13, § 13: Oct. 23, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the current system of funding the state judicial system has created inequity in the level of judicial services available to the citizens of the state; and it is further determined that the current method of financing the state judicial system has become so complex as to make the administration of the system impossible, and the lack of reliable data on the current costs of the state judicial system prohibits any comprehensive change in the funding of the system at this time. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 179, § 38: Feb. 17, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint Interim Committee on Public Health, Welfare, and Labor and in its place established the House Interim Committee and Senate Interim Committee on Public Health, Welfare, and Labor; that various sections of the Arkansas Code refer to the Joint Interim Committee on Public Health, Welfare, and Labor and should be corrected to refer to the House and Senate Interim Committees on Public Health, Welfare, and Labor; that this act so provides; and that this act should go into effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 250, § 258: Feb. 24,

1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 396, § 6: Mar. 7, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the current law refers to a certificate of need process from agencies that have been abolished; that this act is necessary to remove the inconsistencies in the law and to provide for a permit of approval; and that this act is immediately necessary for the adminis-

tration of the law. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 1723, § 15: Apr. 22, 2003. Emergency clause provided: "It is found and determined by the Eighty-fourth General Assembly that there is a pressing and immediate need for the construction of a modern public health laboratory; that this act will provide adequate funding for the construction of the laboratory; and that this act must become effective immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

20-7-101. Violations — Penalties.

(a)(1) Every firm, person, or corporation violating any of the provisions of this act or any of the orders, rules, or regulations made and promulgated in pursuance hereof shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or by imprisonment not exceeding one (1) month, or both.

(2) Each day of violation shall constitute a separate offense.

(b)(1)(A)(i) Every firm, person, or corporation who violates any of the rules or regulations issued or promulgated by the State Board of Health or who violates any condition of a license, permit, certificate, or any other type of registration issued by the board may be assessed a civil penalty by the board. The penalty shall not exceed one thousand dollars (\$1,000) for each violation.

(ii) Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessments.

(B) However, no civil penalty may be assessed until the person charged with the violation has been given the opportunity for a hearing on the violation.

(2) All fines collected under this subsection shall be deposited into the State Treasury and credited to the Public Health Fund to be used to defray the costs of administering this section.

(3) Subject to such rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the Division of Health of the Department of Health and Human Services may transfer all unexpended funds relative to fines collected under this subsection, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

(4) All rules and regulations promulgated pursuant to this subsection shall be reviewed by the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor or appropriate subcommittees thereof.

History. Acts 1913, No. 96, § 28; C. & M. Dig., § 5146; Pope's Dig., § 6417; A.S.A. 1947, § 82-121; Acts 1987, No. 146, § 2; 1991, No. 990, §§ 1, 5; 1997, No. 179, § 19.

Publisher's Notes. Acts 1913, No. 96, § 28, as amended, is also codified as § 14-262-101.

Acts 1991, No. 990, § 5, as amended, which added subdivision (b)(4) of this section, is also codified as §§ 14-262-

101(b)(4), 20-7-109(a)(2), and 20-7-114(b)(3).

Acts 1991, No. 990, §§ 2, 5, as amended, enacted language identical to this section at § 14-262-101.

Meaning of "this act". Acts 1913, No. 96, codified as §§ 14-262-101 — 14-262-105, 20-7-101 — 20-7-106, 20-7-109, 20-7-110, 20-7-114, 20-7-118, 20-7-122, 20-7-125.

CASE NOTES

Cited: Davis v. Rodman, 147 Ark. 385, 227 S.W. 612 (1921).

20-7-102. Members — Appointment.

(a) The State Board of Health shall consist of twenty-three (23) members, to be appointed by the Governor as follows:

(1)(A) Seven (7) members of the board shall be licensed medical doctors of good professional standing, to be appointed by the Governor as follows:

(i) One (1) member shall be appointed from each of the four (4) congressional districts of this state as established by § 7-2-101 et seq.; and

(ii) Three (3) members shall be appointed from the state at large from a list of not fewer than three (3) names presented for each position by the Arkansas Medical Society.

(B) Notwithstanding the provisions of subdivision (a)(1)(A) of this section, at least one (1) of the positions allocated for licensed medical

doctors shall be an osteopathic physician appointed from a list of not fewer than three (3) names presented to the Governor by the Arkansas Osteopathic Medical Association from the state at large;

(2) One (1) member shall be a regularly licensed, registered, and practicing dentist who has at least seven (7) years' experience in the practice of his or her profession in this state. This member shall be appointed from a list of not fewer than three (3) names presented by the Arkansas State Dental Association;

(3) One (1) member shall be a registered professional engineer who has at least seven (7) years' experience in the practice of his or her profession in this state. This member shall be appointed from a list of not fewer than three (3) names presented by the Arkansas Society of Professional Engineers;

(4) One (1) member shall be a regularly licensed professional nurse who has been a resident of the state for at least seven (7) years preceding the appointment and who has at least a bachelor's degree and five (5) years' nursing experience in the state. This member shall be appointed from a list of not more than three (3) names presented by the Arkansas State Nurses Association;

(5) One (1) member shall be a regularly licensed pharmacist who has been actively engaged in the practice of pharmacy for at least seven (7) years preceding his or her appointment. This member shall be appointed from a list of not fewer than three (3) names presented by the Arkansas Pharmacists Association;

(6) One (1) member shall be a regularly licensed veterinarian who has been actively engaged in the practice of veterinary medicine for at least seven (7) years preceding his or her appointment. This member shall be appointed from a list of not fewer than three (3) names presented by the Arkansas Veterinary Medical Association;

(7) One (1) member shall be a registered sanitarian who has at least seven (7) years' experience in the practice of his or her profession preceding his or her appointment. This member shall be appointed from a list of not fewer than three (3) names presented by the Arkansas State Board of Sanitarians;

(8) One (1) member shall be a hospital administrator who has at least seven (7) years' experience in the practice of his or her profession in Arkansas. This member shall be appointed from a list of not fewer than three (3) names presented by the Arkansas Hospital Association;

(9) One (1) member shall be a regularly licensed, registered, and practicing optometrist who has at least seven (7) years' experience in the practice of his or her profession in this state. This member shall be appointed from a list of not fewer than three (3) names presented by the Arkansas Optometric Association;

(10) One (1) member shall be a regularly licensed and practicing chiropractor. This member shall be appointed from a list of not fewer than three (3) names submitted by the Arkansas Chiropractic Association or the Arkansas Chiropractic Society;

(11) One (1) member shall be a restaurant operator who has owned or operated a restaurant for a minimum of five (5) years. This member

shall be appointed by the Governor from a list of three (3) names submitted by the Arkansas Hospitality Association;

(12) One (1) member shall be a consumer representative who has an interest in public health. This member shall be appointed by the Governor from the state at large;

(13) One (1) member shall be more than sixty (60) years old and represent the elderly. This person shall not be actively engaged in or retired from any occupation, profession, or industry to be regulated by the board. The member shall be appointed by the Governor from the state at large and be subject to confirmation by the Senate;

(14) One (1) member shall be a licensed doctor of podiatric medicine of good professional standing who has at least seven (7) years' experience in the practice of the profession in this state. The member shall be appointed from a list of not fewer than three (3) names presented by the Arkansas Podiatric Medical Association;

(15) One (1) member shall be a member of the Arkansas Public Health Association. The member shall be appointed by the Governor from a list of three (3) names submitted by the Arkansas Public Health Association;

(16) One (1) member shall be a licensed medical doctor of good professional standing who shall be appointed from a rural county that contains a medically underserved population in the state; and

(17) One (1) member shall be the Director of the Department of Health and Human Services or his or her designee.

(b) Each of the members of the board so appointed shall take the oath prescribed by the Arkansas Constitution for state officers and shall be commissioned by the Governor in the same manner as other state officials.

History. Acts 1913, No. 96, §§ 1, 2; C. & M. Dig., §§ 5125, 5126; Acts 1929, No. 109, § 1; Pope's Dig., §§ 6388, 6389; Acts 1949, No. 302, §§ 1, 2; 1959, No. 186, §§ 1, 2; 1961, No. 433, § 1; 1963, No. 240, § 1; 1971, No. 204, § 1; 1975, No. 295, § 1; 1977, No. 318, § 1; 1979, No. 198, § 1; 1981, No. 713, § 1; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; A.S.A. 1947, §§ 6-623 — 6-626, 82-101, 82-103; Acts 1987, No. 112, § 1; 1991, No. 829, § 1; 1995, No. 747, § 1; 2003, No. 1450, § 1; 2005, No. 1954, § 5.

A.C.R.C. Notes. Acts 2005, No. 1954, § 4, provided: "State Board of Health."

"(a) Effective at 12:01 AM on July 1, 2005, the State Board of Health is transferred to the Department of Health and Human Services.

"(b) For the purposes of this act, the State Board of Health shall receive administrative support from the Division of

Health of the Department of Health and Human Services but shall retain exactly the same powers, authorities, duties, and functions prescribed by law as it had prior to the transfer and shall have all rule- and regulation-making authority prescribed by law to the Department of Health before the transfer, except as provided for in this act, including, but not limited to:

"(1) Rule making, regulation, licensing, and registration;

"(2) The promulgation of rules, rates, regulations, and standards;

"(3) Examinations, investigations, inspections, and reviews; and

"(4) The rendering of findings, orders, and adjudications."

Amendments. The 2003 amendment inserted "or the Arkansas Chiropractic Society" in (a)(10).

The 2005 amendment substituted "twenty-three (23)" for "twenty-two (22)" in (a); and added (a)(17).

CASE NOTES

Constitutionality.

This act, creating a State Board of Health, was not invalid as creating a permanent office in violation of the Constitution. *Fort Smith Dist. v. Eberle*, 125 Ark. 350, 188 S.W. 821 (1916).

Cited: *Arkansas Medical Soc'y v. Arkansas Medical Soc'y*, 287 Ark. 9, 695 S.W.2d 827 (1985).

20-7-103. Members — Officers.

(a) The members of the State Board of Health shall elect one (1) of the members as president. However, the Director of the Department of Health and Human Services or his or her designee on the board shall not serve as the President of the State Board of Health.

(b)(1) With approval of the board, the Governor shall appoint a Chief Health Officer for the State of Arkansas who shall not be a current sitting member of the board and who shall:

(A) Be a graduate of a legally constituted and reputable medical college;

(B) Be of good standing; and

(C) Have all the powers of the members of the board.

(2) The Chief Health Officer shall also be known as the Secretary of the State Board of Health and shall perform such duties as may be required of him or her by the board or by this subchapter, including, but not limited to:

(A) Serving as the public representative for the board;

(B) Serving as the board's representative on various other state and private boards and commissions as required by the board or in provisions of the Arkansas Code;

(C) Representing the board by providing health information and assisting the division in providing risk factor assessments in regard to improving quality of health issues at public events; and

(D) Assisting the board and the division in:

(i) The creation of various health-oriented outreach campaigns utilizing print, radio, and television public service announcements, advertisements, posters, and other materials;

(ii) Targeting population segments at risk for various health issues;

(iii) Providing reliable information on various health issues to policy makers;

(iv) Distributing information through county health departments, schools, area agencies on aging, employer wellness programs, physicians, hospitals and health maintenance organizations, women's groups, nonprofit organizations, and community-based organizations;

(v) Raising, by any other strategy, public awareness about health issues that are consistent with the provisions of this subchapter;

(vi) Identifying and obtaining educational materials for the professional health care providers that translate the latest scientific and

medical information on various health issues into clinical applications;

(vii) Raising awareness among professional health care providers as to the importance of prevention, early detection, treatment, and rehabilitation practices, techniques, and reporting measures related to various health issues; and

(viii) Developing and conducting workshops and seminars for in-depth professional development in the field of the care and management related to various health issues.

History. Acts 1913, No. 96, § 2; C. & M. Dig., § 5126; Acts 1929, No. 109, § 1; Pope's Dig., § 6389; Acts 1949, No. 302, § 2; 1959, No. 186, § 2; 1979, No. 198, § 1; A.S.A. 1947, § 82-103; Acts 2005, No. 1954, § 5.

Publisher's Notes. The State Board of Health and its functions, powers, and duties were transferred by a type 4 transfer to the Department of Health by Acts 1971,

No. 38. Under § 25-2-107, governing type 4 transfers, the director of the department should be nominated by the board, subject to confirmation of the Governor.

Amendments. The 2005 amendment added the language beginning "except that the Director" in (a); and rewrote (b).

Cross References. Director as member of state medical examiner commission, § 12-12-306.

20-7-104. Members — Compensation.

All appointed members of the State Board of Health may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1913, No. 96, § 27; C. & M. Dig., § 5142; Pope's Dig., § 6413; Acts 1955, No. 82, § 1; 1975, No. 383, § 1; A.S.A. 1947, § 82-105; Acts 1997, No. 250, § 178; 2005, No. 1954, § 5.

Amendments. The 2005 amendment made no changes to this section.

20-7-105. Proceedings.

(a) The State Board of Health shall meet at least one (1) time every three (3) months and, upon the call of the President of the State Board of Health, the Director of the Department of Health and Human Services, or a majority of the members of the board, shall meet at such other times as may be necessary in the interest of public health.

(b)(1) The board may adopt bylaws regulating the transaction of its business and provide within the bylaws for the appointment of committees to which the board may delegate authority and power for all duties committed to the board, but under the direction and subject to the control of the board.

(2) The board may also adopt and use an official seal.

(c) A majority of the members of the board shall constitute a quorum for the transaction of business and for the performance of such duties as the board may prescribe.

History. Acts 1913, No. 96, §§ 3, 4; C. & M. Dig., §§ 5127, 5128; Acts 1929, No. 109, § 2; Pope's Dig., §§ 6390, 6399; A.S.A. 1947, §§ 82-107, 82-108; Acts 2005, No. 1954, § 5.

Amendments. The 2005 amendment inserted "the Director of the Department of Health and Human Services" in (a).

20-7-106. Office.

The office of the State Board of Health shall be located in Little Rock, and the board shall be furnished with all necessary equipment and supplies, including laboratory supplies, books, stationery, blanks, furniture, etc., as are provided other officers of the state and as are necessary for carrying on the work of the board, and the office is to be provided in a suitable building to be designated by the the Director of the Department of Health and Human Services.

History. Acts 1913, No. 96, § 24; C. & M. Dig., § 5139; Pope's Dig., § 6410; A.S.A. 1947, § 82-102; Acts 2005, No. 1954, § 5.

Amendments. The 2005 amendment substituted "the Director of the Department of Health and Human Services" for "Governor."

20-7-107. Appointment of assistant director.

The Director of the Division of Health of the Department of Health and Human Services may appoint and employ an assistant director who shall be knowledgeable in the field of public health and whose duty it shall be to assist the director in the general supervision of the affairs of his or her office and in the enforcement of quarantine and sanitation throughout the state.

History. Acts 1953, No. 282, § 1; 1979, No. 797, § 1; A.S.A. 1947, § 82-104.

20-7-108. Engagement of certain personnel.

From time to time, the State Board of Health may engage suitable persons to render sanitary service, to make or supervise practical and scientific investigations and examinations requiring expert skill, and to prepare plans and to report relative to sanitary service.

History. Acts 1881, No. 85, § 10, p. 177; C. & M. Dig., § 5132; Pope's Dig., § 6403; A.S.A. 1947, § 82-114.

20-7-109. Authority to regulate public health — Exceptions.

(a)(1) Power is conferred on the State Board of Health to make all necessary and reasonable rules and regulations of a general nature for:

(A) The protection of the public health and safety;

(B) The general amelioration of the sanitary and hygienic conditions within the state;

(C) The suppression and prevention of infectious, contagious, and communicable diseases;

(D) The proper enforcement of quarantine, isolation, and control of such diseases; and

(E) The proper control of chemical exposures that may result in adverse health effects to the public.

(2) All rules and regulations promulgated pursuant to this subsection shall be reviewed by the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor or appropriate subcommittees thereof.

(b) However, if a patient can be treated with reasonable safety to the public health, he or she shall not be removed from his or her home without his or her consent, or the consent of the parents or guardian in the case of a minor, and the rules and regulations, when made, shall be printed in pamphlet form, with such numbers of copies as may be necessary for the distribution of the information to health bodies, health and sanitary officers, and the public generally.

(c) The board shall not regulate the practice of medicine or healing nor interfere with the right of any citizen to employ the practitioner of his or her choice.

History. Acts 1913, No. 96, § 6; C. & M. Dig., § 5130; Pope's Dig., § 6401; A.S.A. 1947, § 82-110; Acts 1991, No. 990, §§ 3, 5; 1997, No. 179, § 20.

Publisher's Notes. The State Board of Health and its functions, powers, and duties were transferred by a type 4 transfer to the Department of Health by Acts 1971, No. 38. Under § 25-2-107, governing type 4 transfers, any rules, regulations, and standards issued by the board should be

subject to the written approval of the Governor.

Acts 1991, No. 990, § 5, as amended, which added subdivision (a)(2) of this section, is also codified as §§ 14-262-101(b)(4), 20-7-101(b)(4), and 20-7-114(b)(3).

Cross References. Adoption of rules and regulations for abortion clinics by Department of Health, § 20-9-302.

CASE NOTES

ANALYSIS

Constitutionality.

Effect of other laws.

Constitutionality.

Regulations of the State Board of Health requiring vaccination of school children against smallpox were a valid exercise of the police power of the state and did not violate the religious freedom guaranteed by U.S. Const., Amend. 1, even though the regulation contravened religious beliefs. *Wright v. DeWitt Sch. Dist.*, 238 Ark. 906, 385 S.W.2d 644 (1965); *Mannis v. State ex rel. DeWitt School Dist.*

No. 1, 240 Ark. 42, 398 S.W.2d 206, cert. denied, 384 U.S. 972, 86 S. Ct. 1864, 16 L. Ed. 2d 683 (1966).

Effect of Other Laws.

Acts 1931, No. 169, did not repeal the authority of the State Board of Health to make regulations requiring the vaccination of school children. *Seubold v. Fort Smith Special School Dist.*, 218 Ark. 560, 237 S.W.2d 884 (1951).

Cited: *Arkansas Beverage Co. v. Heath*, 257 Ark. 991, 521 S.W.2d 835 (1975); *Land v. Arkansas Dep't of Health*, 282 Ark. 191, 667 S.W.2d 651 (1984).

20-7-110. Study and prevention of diseases.

(a)(1) The State Board of Health has general supervision and control of all matters pertaining to the health of the citizens of this state.

(2) The board shall make a study of the causes and prevention of infectious, contagious, and communicable diseases, and, except as otherwise provided in this act, the board shall have direction and control of all matters of quarantine regulations and enforcement. The board shall have full power and authority to prevent the entrance of such diseases from points outside the state.

(3) The board shall also have direction and control over all sanitary and quarantine measures for dealing with all infectious, contagious, and communicable diseases within the state and direction and control to suppress them and prevent their spread.

(b) Whenever the health of the citizens of this state is threatened by the prevalence of any epidemic or contagious disease in this or any adjoining state and, in the judgment of the Governor, the public safety demands action on the part of the board, then the Governor shall call the attention of the board to the facts and order it to take such action as the public safety of the citizens demands to prevent the spread of the epidemic or contagious disease.

History. Acts 1895, No. 152, § 1, p. 236; 1913, No. 96, § 5; C. & M. Dig., §§ 5129, 5135; Pope's Dig., §§ 6400, 6406; A.S.A. 1947, §§ 82-109, 82-115.

Meaning of "this act". See note to § 20-7-101.

RESEARCH REFERENCES

Ark. L. Rev. Constitutional Law — Fluoridation of City Water, 10 Ark. L. Rev. 496.

CASE NOTES

ANALYSIS

Constitutionality.
Vaccination.

Constitutionality.

This section does not constitute a delegation of legislative authority. *State v. Martin*, 134 Ark. 420, 204 S.W. 622 (1918).

Regulations of the State Board of Health requiring vaccination of school children against smallpox is a valid exercise of the police power of the state and does not violate the religious freedom guaranteed by U.S. Const., Amend. 1, even though the regulation contravened

religious beliefs. *Wright v. DeWitt Sch. Dist.*, 238 Ark. 906, 385 S.W.2d 644 (1965); *Mannis v. State ex rel. DeWitt School Dist.* No. 1, 240 Ark. 42, 398 S.W.2d 206, cert. denied, 384 U.S. 972, 86 S. Ct. 1864, 16 L. Ed. 2d 683 (1966).

Vaccination.

The State Board of Health has implied power to prescribe the method of vaccination against smallpox. *Allen v. Ingalls*, 182 Ark. 991, 33 S.W.2d 1099 (1930).

Cited: *Land v. Arkansas Dep't of Health*, 282 Ark. 191, 667 S.W.2d 651 (1984).

20-7-111. Administration of certain federal acts.

(a) The State of Arkansas does accept the benefits of any acts now passed or hereafter to be passed by Congress to provide for cooperation with the states in the protection of mothers and infants and promotion of a public health program.

(b)(1) The State Board of Health is designated as the state board for the purpose of carrying into effect the provisions of the federal acts and this section and shall have all necessary authority to cooperate with the federal authorities administering the acts of Congress.

(2) The board shall administer any legislation pursuant thereto enacted by the State of Arkansas under this section for promotion of a health program.

(c)(1) The Director of the Division of Health of the Department of Health and Human Services shall act as executive officer of the board for the purpose of administering the federal acts and this section.

(2) The director shall carry into effect such rules and regulations as the federal authorities and the board may adopt pursuant to the federal acts and this section.

(d) The Treasurer of State is designated and appointed custodian of all moneys received by the state from the appropriation made by the Congress, and he or she may receive and provide for the proper custody of the moneys and make disbursements in the manner provided by law and for the purpose specified in this section.

(e) The allocation of funds under this section shall be made to the respective counties in consecutive order as they make application and qualify for the funds.

(f)(1) Any person, firm, or corporation violating any of the provisions of this section upon conviction shall be guilty of a violation and shall be fined not more than five hundred dollars (\$500) at the discretion of the court.

(2) Each day that the violation is committed shall constitute a separate offense.

History. Acts 1931, No. 235, §§ 3-6, 10, 11; Pope's Dig., §§ 6392-6395, 6397, 6398; A.S.A. 1947, §§ 82-123 — 82-128; Acts 2005, No. 1994, § 103.

Amendments. The 2005 amendment inserted "or she" in (d); and substituted "violation" for "misdemeanor" in (f)(1).

CASE NOTES

Cited: *Jones v. Wyeth Labs., Inc.*, 457 F. Supp. 35 (W.D. Ark. 1978).

20-7-112. Inspections.

(a) It is made the duty of all officers and agents who have the control, charge, or custody of any public structure, work, grounds, or erection, or of any plan, description, outlines, drawings, or charts thereof or relating thereto, made, kept, or controlled under any public authority, to permit and facilitate the examination and inspection and the making

of copies of these items by any officer or person authorized by the State Board of Health.

(b) The members of the board and such other officers or persons as may at any time be authorized by the board, without fee or hindrance, to enter, examine, and survey all grounds, erections, vehicles, structures, apartments, buildings, and plans when the public health may be promoted or in any way preserved.

History. Acts 1881, No. 85, § 10, p. 177; C. & M. Dig., § 5132; Pope's Dig., § 6403; A.S.A. 1947, § 82-114.

20-7-113. Nuisances.

(a)(1) At any time, the Governor may require the State Board of Health to examine nuisances or questions affecting the security of life and health in any locality in the state, and in such cases the board shall have all the necessary powers to make those examinations. The board shall report the results to the Governor within the limits of time which he or she shall prescribe for the examination and report to be prepared and submitted.

(2) At any time, whether an investigation is at the request of the board, or whenever the Governor shall have directed an examination and report to be made by the board into any alleged nuisance, any board of health of any city of the state may appoint and select any one (1) of its officers as its representative during the examination of any nuisance. This representative officer shall have a seat at and be entitled to take part in all the deliberations of the board during the investigation but without the right to vote.

(b) When approved by the Governor, the report of the examination shall be filed in the office of the Secretary of State, and the Governor, in relation to the matters or things found and certified by the board to be a nuisance, may declare them to be public nuisances and order them to be changed as he or she shall direct, or be abated and removed.

(c) Any violation of an order shall be held and punished as a misdemeanor, and thereafter the Governor, by his or her order in writing which is certified under his or her official seal and directed to the officers of the county in which the nuisance shall be situated, may require the prosecuting attorney, the sheriff, and the other officers of every county to take all necessary measures to execute the order of the Governor and to have it obeyed.

History. Acts 1881, No. 85, §§ 8, 9, p. 177; C. & M. Dig., §§ 5133, 5134; Pope's Dig., §§ 6404, 6405; A.S.A. 1947, §§ 82-112, 82-113.

20-7-114. Public health laboratory.

(a)(1) The State Board of Health shall establish, equip, and maintain a public health laboratory that shall be used for making:

(A) Analyses of foods and drugs to enforce pure food and drug laws;

(B) Analyses of the environment to investigate cases or suspected cases of human exposure; and

(C) Investigations of cases and suspected cases of malaria, diphtheria, typhoid fever, tuberculosis, epidemic cerebro-spinal meningitis, glanders, hookworm disease, rabies, and other infectious, contagious, communicable, and debilitating diseases.

(2) The public health laboratory shall be established and maintained at the Division of Health of the Department of Health and Human Services under the direct supervision of the Director of the Division of Health of the Department of Health and Human Services or his or her authorized representatives.

(b)(1)(A) The division may establish fees to be charged for performing analyses of various types of samples submitted to the public health laboratory for examination.

(B) The amount of fees established by the board shall not exceed the actual cost of performing the test.

(2) All fees levied and collected under this subsection are special revenues and shall be deposited into the State Treasury, there to be credited to the Public Health Fund.

(3) All rules and regulations promulgated pursuant to this subsection shall be reviewed by the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor or appropriate subcommittees thereof.

(c) Subject to rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the division may transfer all unexpended funds relative to the laboratory services that pertain to fees collected, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

(d) For the purpose of requesting and receiving laboratory tests from the division, "authorized persons" means:

(1) Public health nurses, nurse practitioners, and nurse midwives practicing under division protocols; and

(2) Physicians employed by the division.

History. Acts 1913, No. 96, § 21; C. & M. Dig., § 5136; Pope's Dig., § 6407; A.S.A. 1947, § 82-118; Acts 1987, No. 146, § 1; 1991, No. 990, §§ 4, 5; 1993, No. 485, § 1; 1997, No. 179, § 21.

Publisher's Notes. Acts 1991, No. 990, § 5, as amended, which added subdivision

(b)(3) of this section, is also codified as §§ 14-262-101(b)(4), 20-7-101(b)(4), and 20-7-109(a)(2).

As enacted by Acts 1995, No. 485, subsection (d) began: "Upon the effective date of this act,".

20-7-115. Transportation of dead bodies.

(a)(1) The State Board of Health shall prepare the necessary methods and forms and prescribe the rules regulating the issue and use of transfer permits, with the proper coupons attached thereto, to be issued by local organized boards of health or health officers, for the transpor-

tation of the dead bodies of persons which are to be transported for burial beyond the limits of the counties where the death occurred.

(2) In all cases, the State Board of Health shall require the coupons to be attached to the permits, to be detached and preserved by every common carrier or the person in charge of any vessel, railroad train, or vehicle to whom the dead bodies shall be delivered for transportation.

(b) Any violation of these rules and regulations shall be a misdemeanor.

History. Acts 1881, No. 85, § 7, p. 177;
C. & M. Dig., § 5131; Pope's Dig., § 6402;
A.S.A. 1947, § 82-111.

20-7-116. Perinatal health.

(a)(1) There is created the Advisory Board for Perinatal Health Services.

(2) The board members shall be appointed by the Governor for terms of four (4) years, and membership of the fourteen-member board shall consist of the following:

(A) One (1) obstetrician;

(B) One (1) pediatrician;

(C) One (1) family practitioner;

(D) Two (2) registered nurses, one (1) in neonatal-perinatal nursing and one (1) in fetal-maternal nursing;

(E) One (1) hospital administrator;

(F) The Director of the Division of Health of the Department of Health and Human Services or a designee;

(G) The Director of the Department of Health and Human Services or a designee;

(H) The Chairman of the Department of Pediatrics and the Chairman of the Department of Obstetrics and Gynecology of the University of Arkansas for Medical Sciences; and

(I) Four (4) ex officio members, consisting of one (1) member from each of the health system agencies.

(3) The board shall select from its membership a chair and a vice chair.

(4) The board shall meet at least two (2) times each calendar year on call of the chair.

(5) It shall be the duty and responsibility of the board to develop a comprehensive statewide network of perinatal health care services through coordination of planning, development, and implementation of perinatal health programs and to recommend perinatal health care policies to the Governor.

(6) The board shall report its findings and recommendations to the Governor.

(7) The board's authority pursuant to this section shall be advisory only.

(b)(1) There is created the Office of Perinatal Health to be within the Division of Health of the Department of Health and Human Services.

(2) It shall be the responsibility of this office to develop a regionalized system of perinatal services with the guidance and advice of the board and under the authority of the Director of the Division of Health of the Department of Health and Human Services.

History. Acts 1979, No. 159, §§ 1-5; 1979, No. 723, § 3; A.S.A. 1947, §§ 5-911.1 — 5-911.5.

Publisher's Notes. Acts 1979, No. 723, § 3, provided, in part, that the terms of "the eleven (11) members initially appointed by the Governor" to the Advisory Board for Perinatal Health Services would

be arranged so that three terms expire every third year and four terms expire in each of the two intervening years. It is unclear which eleven members were intended since four of the fourteen members obtain membership by virtue of holding other offices.

20-7-117. Hospices.

(a) There is created within the Division of Health of the Department of Health and Human Services a State Hospice Office to be administered in a division of the Division of Health to be designated by the Director of the Division of Health of the Department of Health and Human Services.

(b)(1) The office shall:

(A) Coordinate the care of terminally ill persons with all existing agencies, programs, and facilities;

(B) Implement rules, regulations, and standards for hospice care in general agreement with guidelines of the National Hospice Organization and the Arkansas State Hospice Association and in compliance with the Health Care Finance Administration;

(C) Provide technical assistance and information to developing hospices;

(D) Maintain a central storehouse of information and reference materials relating to the hospice concept and disseminate this to programs and individuals on request in an equitable manner and accept and respond to inquiries relating to hospice; and

(E) Assist the Arkansas State Hospice Association in developing the hospice concept in this state and networking hospice programs with existing medical communities and human service facilities.

(2) All functions and duties of the office shall be carried out in accordance with the laws of Arkansas and the regulations of the Health Services Permit Agency, the Health Services Permit Commission, and the federal Centers for Medicare & Medicaid Services.

(c)(1) The regulations and requirements of the Health Services Permit Agency and the Health Services Permit Commission shall be revised to include separate permit-of-approval categories of health care facilities entitled "hospice facilities" and "hospice agencies" and to develop criteria for granting the permits of approval for hospice facilities and for hospice agencies for which applications shall be filed in accordance with the criteria after March 7, 1997, provided that those entities that have filed written intent to build a hospice facility or to operate a hospice agency with both the Health Services Permit Agency

and the division prior to March 7, 1997, shall have thirty-six (36) months to complete the project and be licensed.

(2) A hospice facility or hospice agency shall not convert its licensure to any other license.

(d) As used in this section, "hospice" or "hospice program" means an autonomous, centrally administered, medically directed, coordinated program providing a continuum of home, outpatient, and homelike inpatient care for the terminally ill patient and the patient's family, and which employs an interdisciplinary team to assist in providing palliative and supportive care to meet the special needs arising out of the physical, emotional, spiritual, social, and economic stresses which are experienced during the final stages of illness and during dying and bereavement. The care shall be available twenty-four (24) hours a day, seven (7) days a week, and provided on the basis of need, regardless of ability to pay.

(e) The licensure fee for a hospice shall be an annual fee of five hundred dollars (\$500).

History. Acts 1983, No. 283, §§ 1-4; A.S.A. 1947, §§ 5-911.6 — 5-911.9; Acts 1997, No. 396, §§ 1, 2; 1997, No. 574, § 3; 2001, No. 1800, §§ 4, 5.

Amendments. The 2001 amendment inserted "Permit" following "Health Services" throughout (b)(2) and (c)(1); and

substituted "Financing" for "Finance" in (b)(2).

Cross References. Rights of the terminally ill, § 20-17-201 et seq.

Health Facility Services Revolving Fund, § 19-5-1089.

20-7-118. Annual conference for health officers.

(a) There shall be an annual conference of county health officers and city health officers of this state, meeting at such time and place as the State Board of Health designates. The President of the State Board of Health or some member of the board shall preside at the conference.

(b) Each of the several counties, towns, and cities may provide for and pay the necessary expenses of its county health officer or city health officer for attendance at the conference.

History. Acts 1913, No. 96, § 31; C. & M. Dig., § 5145; Pope's Dig., § 6416; A.S.A. 1947, § 82-120.

20-7-119. Identification tags and bracelets.

(a) When application is made and upon the payment of the fees provided in this section, the Division of Health of the Department of Health and Human Services may prepare and furnish to the applicant either a suitable metal tag commonly referred to as "dog tag" or an identification bracelet which may be inscribed with, in addition to the name and address of the person, the birth date, blood type, and any other pertinent medical information that might be needed in case of an accident or emergency with respect to the person.

(b) The division shall charge a fee of fifty cents (50¢) for each metal tag or dog tag and a fee of one dollar (\$1.00) for each identification bracelet containing the information authorized in this section.

(c) All fees collected under this section shall be deposited into the State Treasury as special revenues, and the Treasurer of State shall credit them, after deducting from them the collection charge authorized by law, to the Public Health Fund to be used to defray the cost of this section and for the maintenance and operation of the division.

History. Acts 1965, No. 433, §§ 1, 2;
A.S.A. 1947, §§ 82-131, 82-132.

20-7-120. No right to enter home or take charge of children.

(a) No official, agent, or representative of the Division of Health of the Department of Health and Human Services shall have any right under this section to enter any home over the objection of the owner of the home or to take charge of any child over the objection of either or both parents or of the person standing in loco parentis or having custody of the child.

(b) Nothing in this section shall be construed as limiting the power of a parent or guardian or person standing in loco parentis to determine what treatment or correction shall be provided for a child or the agencies to be employed for these purposes.

History. Acts 1923, No. 92, § 5; Pope's
Dig., § 6453; A.S.A. 1947, § 82-129.

20-7-121. Annual report.

(a) It shall be the duty of the State Board of Health to make an annual written report through the Director of the Division of Health of the Department of Health and Human Services to the Governor on or before January 1 of each year.

(b) The report shall include:

(1) A financial statement covering the expenditures of all funds appropriated for the board's purposes;

(2) So much of the proceedings of the board and information concerning vital and mortuary statistics, knowledge respecting diseases, and instructions on the subject of sanitation and hygiene which may be thought useful by the board for dissemination among the people; and

(3) Such suggestions as to legislative action as the board deems necessary.

History. Acts 1913, No. 96, § 29; C. &
M. Dig., § 5143; Pope's Dig., § 6414;
A.S.A. 1947, § 82-122.

20-7-122. Reports for general distribution.

The State Board of Health may publish for general distribution such reports and other matter as it may deem useful in promoting the interest of the public health of this state.

History. Acts 1913, No. 96, § 23; C. & M. Dig., § 5138; Pope's Dig., § 6409; A.S.A. 1947, § 82-119.

20-7-123. Fees.

(a) All revenue derived from fees collected pursuant to this section shall be deposited as special revenues into the State Treasury, where they shall be credited to the Public Health Fund.

(b) These fees are as follows:

(1) All fees prescribed in the Vital Statistics Act, § 20-18-101 et seq., which are as follows:

(A) A fee of two dollars and fifty cents (\$2.50) collected by the State Registrar of Vital Records for the filing of a delayed certificate of birth;

(B) A fee of two dollars and fifty cents (\$2.50) collected by the state registrar for the filing of a delayed certificate of death or marriage;

(C) [Repealed.]

(D) A fee of five dollars (\$5.00) collected by the state registrar for issuing a new certificate of birth for a person who has been legitimated, or whose paternity has been determined, or whose name has been changed;

(E) A fee of one dollar (\$1.00) collected by the clerks of the county courts upon the application of any person for marriage, which fee is in addition to any other fees;

(F) [Repealed.]

(G) A fee of two dollars (\$2.00) collected by the state registrar for the amendment of any record;

(H)(i) A fee of eight dollars (\$8.00) collected by the state registrar for the making and certification of any certificate or record other than a death certificate;

(ii) A fee of five dollars (\$5.00) collected for the making and certification of each additional copy of a certificate or record other than a death certificate;

(I)(i) A fee of eight dollars (\$8.00) collected by the state registrar for the making and certification of a single copy of a death certificate; and

(ii) A fee of three dollars (\$3.00) collected for the making and certification of each additional copy of a death certificate;

(J)(i) A fee of eight dollars (\$8.00) collected by the state registrar for an examination and search of the files for any birth, marriage, divorce, or death record.

(ii) The fee shall be paid prior to searching the record; and

(K) A fee of five dollars (\$5.00) collected by the state registrar for establishing a new certificate of birth under § 20-18-406.

(L) After June 30, 2003, the fee provisions as set forth in this subdivision (b)(1) shall revert to those fees allowed prior to August 13, 2001.

(2)(A) A fee, as determined pursuant to this subdivision (b)(2), to be collected for the review of plans and specifications covering improvements which, by law or regulation, are required to be reviewed by the State Board of Health or the Division of Health of the Department of Health and Human Services, or any law or regulation amendatory thereof or supplementary thereto, including, without limitation, plans and specifications covering waterworks, sewage works, swimming pools, hospitals and related facilities, food service and food processing establishments, and plumbing in public facilities.

(B) The fee shall be one percent (1%) of the estimated cost, with a maximum fee of five hundred dollars (\$500) and a minimum of fifty dollars (\$50.00), calculated and paid on the basis of the engineering estimate of the total cost of the particular improvement, which estimate is to be submitted with the plans and specifications for review.

(C) If the maximum fee of five hundred dollars (\$500) is paid, no engineering estimate of the total cost need be submitted with the plans and specifications.

(3) A fee of fifty dollars (\$50.00) to be collected by the board or the department for each cemetery inspection as required by law or regulation, or any law or regulation amendatory thereof or supplementary thereto.

History. Acts 1965, No. 469, § 10; 1983, No. 378, § 2; 1985, No. 351, §§ 1, 4; A.S.A. 1947, §§ 82-130, 82-130.1; Acts 1987, No. 399, §§ 1, 2; 1993, No. 350, § 6; 1993, No. 403, § 11; 1995, No. 270, § 14; 1995, No. 1254, § 29; 1995, No. 1256, § 20; 1995 (1st Ex. Sess.), No. 13, § 4; 2001, No. 957, §§ 1-4; 2003, No. 1723, § 14.

A.C.R.C. Notes. The operation of subdivision (b)(1) may be affected by the enactment of Act 1256 of 1995, codified principally at § 16-10-301 et seq.

Acts 2003, No. 1723, § 13, codified as § 19-6-485(d), provided: "After June 30, 2003: (1) The fee levied by § 20-7-123(b)(1)(H)(i) shall revert to five dollars (\$5.00); (2) The fee levied by § 20-7-123(b)(1)(H)(ii) shall cease to be collected; (3) The fee levied by § 20-7-123(b)(1)(I)(i) shall revert to four dollars (\$4.00); (4) The fee levied by § 20-7-123(b)(1)(I)(ii) shall revert to one dollar (\$1.00); and (5) The fee levied by § 20-7-123(b)(1)(J)(i) shall revert to five dollars (\$5.00)."

Publisher's Notes. The 1985 amendment increased the fees for the making

and certification of any certificate of record, other than a death certificate, from two dollars to five dollars and for the examination and search of the files for any birth, marriage, or divorce record from two dollars to five dollars.

Acts 1985, No. 351, § 5 provided that it was the purpose and intent of Acts 1985, No. 351 to levy increased or additional fees to be collected by the Division of Vital Records with part of the additional fees to be credited to the Public Health Fund. It was not the intent of that Act to in any way jeopardize revenues pledged to secure bonds issued under the provisions of Acts 1965, No. 469 or to otherwise impair the obligations on such bonds.

Acts 1985, No. 351, § 4, is also codified as § 20-18-306.

Amendments. The 2001 amendment substituted "eight dollars (\$8.00)" for "five dollars (\$5.00)" in present (b)(1)(H)(i) and (b)(1)(J)(i); added (b)(1)(H)(ii); substituted "eight dollars (\$8.00)" for "four dollars (\$4.00)" in (b)(1)(I)(i); substituted "three dollars (\$3.00)" for "one dollar (\$1.00)" in (b)(1)(I)(ii); substituted "divorce, or death

record" for "or divorce record, and a fee of four dollars (\$4.00) for an examination and search of the files for any death record" in (b)(1)(J)(i); and added (b)(1)(L).

The 2003 amendment substituted "After June 30, 2003" for "On and after August 15, 2003" in (b)(1)(L).

Cross References. Circuit and chan-

cery court clerks fees, § 21-6-402 et seq.

Marriage license fee, § 14-20-111.

Uniform advance fees and probate court costs, § 16-14-105.

Amount of fees levied by this section going to the Health Department Technology Fund, § 19-6-485(d).

20-7-124. Disposition of certain fees.

All fees collected by the Division of Health of the Department of Health and Human Services for food-related establishment permits, septic tank permits, and milk permits shall be deposited into the State Treasury to the credit of the Public Health Fund and shall be for the use of the Division of Sanitarian Services of the Division of Health of the Department of Health and Human Services.

History. Acts 1977, No. 889, § 36.

Cross References. Food services es-

tablishments, § 20-57-201 et seq.

Milk products, § 20-59-101 et seq.

20-7-125. Payment of certain salaries and expenses.

All salaries and other expenses provided for by this act which are not required to be paid by counties, cities, and incorporated towns shall be paid out of the Public Health Fund.

History. Acts 1913, No. 96, § 30; C. & M. Dig., § 5144; Pope's Dig., § 6415; A.S.A. 1947, § 82-106.

Meaning of "this act". See note to § 20-7-101.

20-7-126. Payment of overtime for home health employees.

(a) The Division of Health of the Department of Health and Human Services may make overtime payments to employees engaged in the performance of home health activities.

(b) The payments are to be in addition to compensation otherwise due the employees at the same rate currently paid to the employees for regular time, but on an hourly basis.

History. Acts 1989 (1st Ex. Sess.), No. 991, § 33.

A.C.R.C. Notes. Former § 20-7-126, concerning payment of overtime for home

health employees, is deemed to be superseded by this section. The former section was derived from Acts 1985, No. 718, § 25.

20-7-127. Fees for visits to local health units.

(a)(1) There is imposed a fee of two dollars (\$2.00) for each client visit to a local health unit. The State Board of Health may assess any client a single charge of ten dollars (\$10.00) to cover all visits by the client for a period of one (1) year, which charge shall be in lieu of the charge of two dollars (\$2.00) per visit provided in this subdivision (a)(1).

(2) Fees levied by the board under this section shall be collected by the respective local health units from each client who is financially able to pay the fee.

(b) If revenue from these fees is inadequate to enable local health units to continue the provision of essential services and the expansion and improvement of local health unit facilities in the state, the board, with the review and comment of the Legislative Council, may adopt appropriate rules and regulations to increase the client visit fee imposed in subsection (a) of this section to an amount not to exceed five dollars (\$5.00) per client visit or a twenty-five dollar (\$25.00) single annual charge and prescribe guidelines for the assessment, collection, and remittance of those fees.

(c)(1) Funds derived from the fees levied under this section shall be collected by the various local health units. The funds shall be deposited into a local bank account and remitted monthly to the Division of Health of the Department of Health and Human Services.

(2)(A) The division shall deposit all the funds received from local health units into the State Treasury, where they shall be credited to the State Health Department Building and Local Grant Trust Fund.

(B) Any funds derived from the collection of client visit fees in excess of six hundred thousand dollars (\$600,000) in any fiscal year shall be transferred to the Public Health Fund by the Chief Fiscal Officer of the State upon the request of the Director of the Division of Health of the Department of Health and Human Services.

(3) Subject to such rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the disbursing officers for the division may transfer all remaining unexpended funds, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditure for the same purposes for any following fiscal year.

History. Acts 1987, No. 677, §§ 1-3;
1993, No. 350, §§ 4, 5.

20-7-128. Maintenance fee for breath testing instruments.

(a)(1) The State Board of Health may assess a fee for the maintenance of breath testing instruments by law enforcement agencies for purposes contained in § 5-65-101 et seq. and § 5-65-201 et seq.

(2) The fees collected shall be used for the support of the maintenance program as appropriated by law.

(3) This subsection does not exclude manufacturer-approved repair services.

(b) The fee imposed shall not exceed the cost of maintenance by the Division of Health of the Department of Health and Human Services.

(c)(1) Funds derived from the fees levied under this section are special revenues and shall be collected by the division and deposited into the State Treasury, where they shall be credited to the Public Health Fund.

(2) Subject to such rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the disbursing officers for the division may transfer all unexpended funds relative to the blood alcohol instrument maintenance program funds outlined in this section, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for the expenditures for the same purpose for any following year.

History. Acts 1989, No. 577, § 1.

A.C.R.C. Notes. Acts 1989, No. 577, § 1, provided, in part, that fees for fiscal years 1990 and 1991 shall be paid at the

rate of not more than \$30 per hour plus actual cost of parts, shipping, and supplies.

20-7-129. Reimbursement for certain medical supplies or services.

(a) The State Board of Health may adopt rules and regulations to implement a reimbursement system to recover part or all of the costs of certain medical supplies or services.

(b) The system shall provide that fees shall be collected only from those patients who are financially able to pay the fee and that no one shall be denied services because of inability to pay.

(c) Funds derived from the fees shall be used exclusively for the purchase of medical supplies or services necessary to enable the Division of Health of the Department of Health and Human Services to continue to provide essential health care.

(d) Any fee established shall not exceed the cost of the service.

(e) All medications and treatment for tuberculosis patients shall be excluded from any such fee system established under this section.

(f)(1) Funds collected by the division under this section shall be deposited into the State Treasury. These funds shall be credited to the Public Health Fund to be used exclusively for support of medical supplies or services.

(2) Subject to rules and regulations as may be implemented by the Chief Fiscal Officer of the State, all unexpended funds that pertain to fees collected shall be carried forward and made available for expenditure for the same purposes for any following fiscal year.

History. Acts 1989, No. 387, §§ 1, 2.

20-7-130. Recovery of expenditures for extraordinary operations.

(a) The purpose of this section is to more equitably allocate the costs between the state and responsible parties when unforeseen circumstances arise as a result of accidents and other man-made causes which require assistance from the Division of Health of the Department of Health and Human Services. The authority to recover these expenses would enable the division to replace funds budgeted for routine activities which were spent for a division response to nonroutine, unplanned

circumstances creating the potential for adverse health effects such as transportation accidents involving food and drugs, environmental contamination, and food product contamination.

(b)(1) The State Board of Health may promulgate rules and regulations necessary to carry out the intent and purpose of this section.

(2) In adopting these rules, the board shall define the circumstances under which recovery should be pursued and the method to determine the amount of each recovery, which shall be based on costs.

(c) The division may recover from the responsible party or parties actual costs incurred in participation during extraordinary, time-consuming operations such as damage assessment, sampling, monitoring, health studies, and product evaluations which arise from unforeseen circumstances.

(d) All moneys levied and collected under this section are special revenues and shall be deposited into the State Treasury, there to be credited to the Public Health Fund.

(e) Subject to rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the division may transfer all unexpended funds relative to the recovery of expenditures program that pertain to moneys collected, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

History. Acts 1989, No. 384, §§ 1, 2.

20-7-131. Local control of county or city units of the Division of Health of the Department of Health and Human Services.

(a) The mayor or county judge of any city or county that is providing facilities for a local unit of the Division of Health of the Department of Health and Human Services shall be consulted before the hiring of or the removal of the administrator of the local unit.

(b) Notwithstanding the Freedom of Information Act of 1967, § 25-19-101 et seq., the division with the consent of the employee may share personnel information with a mayor or county judge.

(c) Furthermore, any employee removed as administrator of a local unit shall be allowed to participate in the state grievance process.

History. Acts 2003, No. 657, § 1.

A.C.R.C. Notes. References to “this subchapter” in §§ 20-7-101 — 20-7-130

may not apply to this section, which was enacted subsequently.

20-7-132. Guidelines for cleanup of clandestine methamphetamine labs.

(a) The Division of Health of the Department of Health and Human Services shall develop guidelines for the cleanup of former clandestine methamphetamine drug labs.

(b) The guidelines shall be made available on the division's website and shall be available to law enforcement officials and the public upon request.

(c) The guidelines shall be reviewed and updated annually.

History. Acts 2003, No. 1270, § 1.

A.C.R.C. Notes. References to "this subchapter" in §§ 20-7-101 — 20-7-130 may not apply to this section, which was enacted subsequently.

Acts 2005 No. 1996, § 1, provided:

"(a) There is created the Manufactured Drug Inspection and Cleanup Study Committee.

"(b) The committee shall be composed of the directors or the directors' designees of the following state agencies that shall jointly conduct the study required under subsection (d) of this section:

"(1) Arkansas Department of Environmental Quality;

"(2) Department of Health;

"(3) Arkansas Manufactured Home Commission;

"(4) Arkansas Landlord's Association;

"(5) State Crime Laboratory;

"(6) Arkansas Drug Director; and

"(7) Department of Arkansas State Police.

"(c)(1) The following entities may participate in the committee:

"(A) Arkansas Chiefs of Police Association;

"(B) Arkansas Hospitality Association;

"(D) Mortgage Bankers Association of Arkansas;

"(E) Arkansas Realtors Association; and

"(F) Arkansas Sheriffs Association.

"(2) If any entity listed in subdivision (c)(1) of this section joins the committee, that entity shall be included as a full partner in all matters before the committee.

"(d)(1) The committee shall conduct a study concerning inspection and cleanup of properties where controlled substances have been manufactured.

"(2) The study shall determine what guidelines should be established for inspection and cleanup of structures where controlled substances, as defined in the Uniform Controlled Substances Act, § 5-

64-101 et seq., have been manufactured and initial cleanup has been performed by law enforcement agencies, including:

"(A) Certification and guidelines for private entities that undertake inspections of contaminated properties;

"(B) Certification and guidelines for private entities that undertake remediation or removal, or both, of contaminated materials from contaminated properties;

"(C) Guidelines for appropriate record-keeping by the Department of Health or another appropriate governmental entity with respect to:

"(i) A listing of contaminated properties;

"(ii) Inclusion of property on the contaminated properties list;

"(iii) The results of cleanup of contaminated properties and removal of a structure from the contaminated property list; and

"(iv) Access to the records created under subdivisions (d)(2)(C)(i)-(iii) of this section by potential purchasers of contaminated properties; and

"(D) Guidelines for steps to be taken by property owners for removal of a structure from the contaminated property list.

"(e) The committee shall report its findings to the Legislative Council on or before January 1, 2006.

"(2) The report shall include, but not be limited to:

"(A) A summary of all of the certification and guidelines developed under subsection (d) of this section; and

"(B) A determination concerning whether, with respect to inspection and cleanup of contaminated properties:

"(i) Legislation should be enacted by the General Assembly; or

"(ii) Regulatory action should be taken by the Department of Health or another appropriate governmental entity under existing law."

Publisher's Notes. As enacted by Acts 2003, No. 1270, subsection (a) ended: "by April 1, 2004."

20-7-133. Child Health Advisory Committee — Creation.

(a) There is created a Child Health Advisory Committee to consist of fifteen (15) members.

(b)(1) The Director of the Division of Health of the Department of Health and Human Services shall appoint:

(A) One (1) member to represent the Division of Health of the Department of Health and Human Services;

(B) One (1) member to represent the Arkansas Dietetic Association;

(C) One (1) member to represent the Arkansas Academy of Pediatrics;

(D) One (1) member to represent the Arkansas Academy of Family Practice;

(E) One (1) member to represent the Arkansas Association for Health, Physical Education, Recreation and Dance;

(F) One (1) member to represent jointly the Arkansas Heart Association, the American Cancer Society, and the American Lung Association;

(G) One (1) member to represent the College of Public Health of the University of Arkansas for Medical Sciences;

(H) One (1) member to represent the Arkansas Center for Health Improvement;

(I) One (1) member to represent the Arkansas Advocates for Children and Families; and

(J) One (1) member to represent the University of Arkansas Cooperative Extension Service.

(2) The Commissioner of Education shall appoint:

(A) One (1) member to represent the Department of Education;

(B) One (1) member to represent the Arkansas School Food Service Association;

(C) One (1) member to represent the Arkansas School Nurses Association;

(D) One (1) member to represent the Arkansas Association of Educational Administrators; and

(E) One (1) member to represent the Arkansas Parent Teacher Association.

(c) Terms of committee members shall be three (3) years except for the initial members, whose terms shall be determined by lot so as to stagger terms to equalize as nearly as possible the number of members to be appointed each year.

(d) If a vacancy occurs, the officer who made the original appointment shall appoint a person who represents the same constituency as the member being replaced.

(e) The committee shall elect one (1) of its members to act as chair for a term of one (1) year.

(f) A majority of the members shall constitute a quorum for the transaction of business.

- (g) The committee shall meet at least monthly.
- (h) The division shall provide office space and staff for the committee.
- (i) Members of the committee shall serve without pay but may receive expense reimbursement in accordance with § 25-16-902 if funds are available.

History. Acts 2003, No. 1220, § 1.

20-7-134. Powers and duties.

(a) The Child Health Advisory Committee shall meet at least one (1) time per month and make recommendations to the State Board of Education and the State Board of Health consistent with the intent and purpose of this section, § 20-7-133, and § 20-7-135.

(b) The committee shall develop nutrition and physical activity standards and policy recommendations with consideration of the following:

(1) Foods sold individually in school cafeterias but outside the regulated National School Lunch Program;

(2) Competitive foods as defined by the United States Department of Agriculture as the definition is in existence on January 1, 2003, and offered at schools typically through vending machines, student stores, school fundraisers, food carts, or food concessions;

(3) The continuing professional development of food service staff;

(4) The expenditure of funds derived from competitive food and beverage contracts;

(5) Physical education and activity;

(6) Systems to ensure the implementation of nutrition and physical activity standards; and

(7) The monitoring and evaluating of results and reporting of outcomes.

History. Acts 2003, No. 1220, § 1.

20-7-135. Nutrition and physical activity standards — Implementation.

(a) After having consulted the Child Health Advisory Committee and the State Board of Health, the State Board of Education shall promulgate appropriate rules and regulations to ensure that nutrition and physical activity standards are implemented to provide students with the skills, opportunities, and encouragement to adopt healthy lifestyles.

(b) The Division of Health of the Department of Health and Human Services in consultation with the Department of Education shall:

(1) Employ one (1) qualified community health promotion professional with training or experience, or both, in nutrition, chronic disease, or another related field to be housed within the division to plan, develop, implement, and evaluate pilot or model programs to support schools and communities if funds are available;

(2) Employ one (1) statewide health promotion consultant to be housed within the Department of Education if funds are available;

(3) Employ one (1) person as a community health promotion specialist to support implementation of pilot or model programs in schools and communities in nutrition and physical activity in several distinct geographical areas of the state if funds are available; and

(4) Not use more than five percent (5%) of the annual Division of Health of the Department of Health and Human Services Master Settlement Agreement funds for the salaries or programs created under this subsection.

(c) Every school district shall:

(1) Prohibit for elementary school students in-school access to vending machines offering food and beverages;

(2) Require schools to include as part of the annual report to parents and the community the amounts and specific sources of funds received and expenditures made from competitive food and beverage contracts;

(3) Require schools to include as a part of a student health report to parents an annual body mass index percentile by age for each student; and

(4) Require schools to annually provide parents with an explanation of the possible health effects of body mass index, nutrition, and physical activity.

(d) The Department of Education shall:

(1) Begin the implementation of standards developed by the committee and approved by the Department of Education; and

(2) Annually monitor and evaluate the implementation and effectiveness of the nutrition and physical education standards.

(e) Every school district shall:

(1) Convene a school nutrition and physical activity advisory committee that shall include members from school district governing boards, school administrators, food service personnel, teacher organizations, parents, students, and professional groups such as nurses and community members to:

(A) Help raise awareness of the importance of nutrition and physical activity; and

(B) Assist in the development of local policies that address issues and goals, including, but not limited to, the following:

(i) Assisting with the implementation of nutrition and physical activity standards developed by the school nutrition and physical activity advisory committee with the approval of the Department of Education and the State Board of Health;

(ii) Integrating nutrition and physical activity into the overall curriculum;

(iii) Ensuring that professional development for staff includes nutrition and physical activity issues;

(iv) Ensuring that students receive nutrition education and engage in healthful levels of vigorous physical activity;

(v) Improving the quality of physical education curricula and increasing training of physical education teachers;

- (vi) Enforcing existing physical education requirements; and
- (vii) Pursuing contracts that both encourage healthy eating by students and reduce school dependence on profits from the sale of foods of minimal nutritional value;
- (2) Begin the implementation of standards developed by the committee with the approval of the Department of Education and the State Board of Health; and
- (3) Require that goals and objectives for nutrition and physical activity be incorporated into the annual school planning and reporting process.
- (f) The Department of Education and the division shall report annually on progress in implementing nutrition and physical education standards to the chairs of the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor.

History. Acts 2003, No. 1220, § 1; 2003 (2nd Ex. Sess.), No. 29, § 1.

A.C.R.C. Notes. As enacted by Acts 2003, No. 1220, subsections (b) and (c) began: “Beginning with the 2003-2004 school year,” and subsections (d) and (e)

began: “Beginning with the 2004-2005 school year,”.

Amendments. The 2003 (2nd Ex. Sess.) amendment substituted “a student health report” for “the student report card” in (c)(3).

SUBCHAPTER 2 — ARKANSAS HEALTH DEPARTMENT BUILDING AND LOCAL GRANT ACT

SECTION.	SECTION.
20-7-201. Title.	20-7-205. Rules and regulations — Application for grants.
20-7-202. Definitions.	
20-7-203. Disposition of funds.	20-7-206. Participation conditioned.
20-7-204. State Health Department Building and Local Grant Trust Fund.	

Publisher’s Notes. Acts 1993, No. 350, § 7, provided: “(a) All powers, functions and duties heretofore vested in and exercised by the Health Building Commission are hereby transferred to and shall hereafter be vested in the State Board of Health.

“(b) All funds appropriated to and all property, both real and personal, vested in the Health Building Commission are hereby transferred and shall be made available to the State Board of Health.

“(c) The Health Building Commission is hereby abolished.”

Effective Dates. Acts 1991, No. 1162, § 15: Apr. 10, 1991. Emergency clause provided: “It is hereby found and determined by the General Assembly that the Arkansas Department of Health is criti-

cally in need of additional space and that, accordingly, the expansion, which is authorized and enabled by this act, must be constructed as soon as feasible. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety, shall be in force upon its passage and approval.”

Acts 1993, No. 350, §§ 3-6: effective July 1, 1993.

Acts 1993, No. 350, § 11: Mar. 3, 1993. Emergency clause provided: “It is hereby found and determined by the General Assembly that the Arkansas Department of Health is critically in need of additional space and that, accordingly, the authorization to construct or acquire space enabled by this act, must be obtained as soon as feasible. Therefore, an emergency is

hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall

be in full force and effect from and after its passage and approval."

20-7-201. Title.

This subchapter may be known and may be cited as the "Arkansas Health Department Building and Local Grant Act".

History. Acts 1989, No. 749, § 1.

20-7-202. Definitions.

As used in this subchapter:

(1)(A) "Acquire" means to lease, lease-purchase, or purchase any lands, buildings, structures, improvements, or other property, real, personal, or mixed.

(B) "Acquire" also includes payment or provision for payment of all expenses incidental thereto;

(2) "Board" means the State Board of Health;

(3)(A) "Construct" means to acquire, construct, reconstruct, renovate, remodel, install, and equip any lands, buildings, structures, improvements, or other property, real, personal, or mixed, useful in connection with any expansion or acquisition and to make other necessary expenditures in connection therewith by the methods and in the manner as may be authorized by law and in the case of an acquisition of equipment and other property of a medical, laboratory, or technical nature, by the method the Director of the Division of Health of the Department of Health and Human Services shall determine to be necessary or desirable to accomplish the power, purposes, and authorities set forth in this subchapter and without regard to the provisions of other laws pertaining to the construction and acquisition of property by state agencies.

(B) "Construct" also includes payment or provision for payment for all expenses incidental thereto;

(4) "Director" or "State Health Officer" means the Director of the Division of Health of the Department of Health and Human Services;

(5) "Division" means the Division of Health of the Department of Health and Human Services;

(6) "Fees" means all fees set forth in § 20-7-123(b), which are confirmed and ratified by this subchapter; and

(7) "Fund" means the State Health Department Building and Local Grant Trust Fund.

History. Acts 1989, No. 749, § 1; 1993, No. 350, § 1.

20-7-203. Disposition of funds.

(a) The Director of the Division of Health of the Department of Health and Human Services may construct or acquire such facilities and property as are necessary for the provision of current and future requirements for the Division of Health of the Department of Health and Human Services.

(b) Notwithstanding other provisions of this subchapter, the director, with the approval of the State Board of Health, may use any unobligated funds in the State Health Department Building and Local Grant Trust Fund in an amount not to exceed six hundred fifty thousand dollars (\$650,000) to construct or acquire any land, building, structure, or other property, real, personal, or mixed, and any expenses incidental thereto which are deemed appropriate for the provision of current and future requirements for the division.

(c) With the approval of the board, the director may lease, sublease, or otherwise negotiate for the use of any space acquired or constructed under this subchapter to other governmental and nongovernmental entities. Revenues derived from any such lease, sublease, or other arrangement shall be deposited into the Public Health Fund.

(d) Neither the director nor any member of the board shall be personally liable for any obligation or action undertaken in connection therewith or for any damages sustained by anyone with respect to any obligations or actions unless he or she shall have acted with a corrupt intent.

History. Acts 1989, No. 749, § 1; 1991, No. 1162, § 14; 1993, No. 350, § 2.

A.C.R.C. Notes. As enacted in 1989, subsection (a) began: "Within 120 days of the effective date of this act." As enacted in 1989, subsection (c) read in part: "from

and after the effective date of this act." Acts 1989, No. 749, did not contain an emergency clause and thus became effective on the general effective date, which was July 3, 1989.

20-7-204. State Health Department Building and Local Grant Trust Fund.

(a) There is established on the books of the Treasurer of State, Auditor of State, and Chief Fiscal Officer of the State a fund to be known as the "State Health Department Building and Local Grant Trust Fund".

(b) The fund shall consist of such revenues as may be authorized by law, including the portion of client visit fees specified in § 20-7-127.

(c) The Director of the Division of Health of the Department of Health and Human Services shall be the disbursing agent and executive officer for the fund.

(d) The fund shall be a continuing fund, not subject to fiscal year limitations, and, except as provided in § 20-7-203(b), shall only be used for expansion, renovation, construction, or improvements to the State Health Department Building and for grants for construction, renovation, or other expansion of approved local health unit facilities in this state.

(e) No money from the fund may be used for the acquisition, purchase, lease, or otherwise, of real property for any local health unit facility.

History. Acts 1989, No. 749, § 1; 1993, No. 350, § 3.

20-7-205. Rules and regulations — Application for grants.

(a)(1) The State Board of Health may develop and implement rules and regulations to receive, review, and approve applications for grants for new construction, renovation, or expansion of local health unit facilities from counties or cities.

(2) The board may adopt such rules and regulations as may be necessary to provide for the distribution of such funds for the renovation, construction, improvement, and development of the State Health Building.

(b) Except as provided in subsection (c) of this section, any grant approved by the board to a county or city for the development of a local public health facility project shall require ten percent (10%) local matching funds from the city or county applicant. The matching funds may be in the form of either cash or an in-kind match, to be determined by the board. The value of existing buildings and property shall not qualify for local matching funds under this section.

(c) The board may also establish by rule a special program to address renovation of local health units due to special requirements of the Division of Health of the Department of Health and Human Services. The programs shall provide for grants of up to ten thousand dollars (\$10,000). The local match may be waived for the special grants.

(d)(1) Application for grants under this subchapter shall be made in accordance with the rules and regulations of the board, and each application shall be considered on a needs assessment basis.

(2) In addition, the applicant city or county shall furnish proof of the following with each grant application:

- (A) Local community involvement in the project;
- (B) Existence of resources to expand existing facilities, including availability of land;
- (C) A design of the proposed project; and
- (D) Evidence of need, including factors such as population growth, additional services to be offered, and increased workload.

History. Acts 1989, No. 749, § 1.

20-7-206. Participation conditioned.

Participation in the grant programs shall be conditioned on compliance with this subchapter and any rules or regulations of the State Board of Health promulgated under this subchapter.

History. Acts 1989, No. 749, § 1.

SUBCHAPTER 3 — STATE HEALTH DATA CLEARINGHOUSE ACT

SECTION.		SECTION.	
20-7-301.	Title.		subject to discovery.
20-7-302.	Purpose.	20-7-306.	Reports — Assistance.
20-7-303.	Collection and dissemination of health data.	20-7-307.	Penalties.
20-7-304.	Release of health data.	20-7-308.	Repealer.
20-7-305.	State Board of Health to prescribe rules and regulations — Data collected not	20-7-309.	List of substances used to alter samples in drug or alcohol screening tests.
		20-7-310.	Construction with other laws.

A.C.R.C. Notes. References to “this subchapter” in §§ 20-7-301 — 20-7-308 may not apply to §§ 20-7-309 and 20-7-310, which were enacted subsequently.

Effective Dates. Acts 1997, No. 179, § 38: Feb. 17, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint Interim Committee on Public Health, Welfare, and Labor and in its place established the House Interim Committee and Senate Interim Committee on Public Health, Welfare, and Labor; that various sections of the Arkansas Code refer to the Joint Interim Committee on Public Health, Welfare, and Labor and should be corrected to refer to the House and Senate Interim Committees on Public Health, Welfare, and Labor; that this act so provides; and that this act should go into effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither

approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2003, No. 999, § 4[5]: Apr. 1, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the federal District Courts for the Eastern and Western Districts of Arkansas have held the state’s school immunization statute to be unconstitutional, that the courts have stayed the effect of the finding, that if the stay is lifted before this act becomes effective, some students will be excluded from school attendance. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

20-7-301. Title.

This subchapter shall be entitled the “State Health Data Clearinghouse Act”.

History. Acts 1995, No. 670, § 1.

20-7-302. Purpose.

The General Assembly finds that as a result of rising health care costs, the shortage of health professionals and health care services in

many areas of the state, and the concerns expressed by care providers, consumers, third-party payors, and others involved with planning for the provision of health care, there is an urgent need to understand patterns and trends in the availability, use, and costs of these services. Therefore, to establish an information base for patients, health professionals, and hospitals, to improve the appropriate and efficient usage of health care services, and to provide for appropriate protection for confidentiality and privacy, the Division of Health of the Department of Health and Human Services shall act as a state health data clearinghouse for the acquisition and dissemination of data from state agencies and other appropriate sources to carry out this subchapter.

History. Acts 1995, No. 670, § 2.

20-7-303. Collection and dissemination of health data.

(a) With the approval of the State Board of Health, the Director of the Division of Health of the Department of Health and Human Services shall compile and disseminate health data collected by the Division of Health of the Department of Health and Human Services.

(b)(1) In consultation with advisory groups appointed by the director with representation from hospitals, outpatient surgery centers, health profession licensing boards, and other state agencies, the division should:

(A) Identify the most practical methods to collect, transmit, and share required health data as described in § 20-7-304;

(B) Utilize, wherever practical, existing administrative databases and modalities of data collection to provide the required data;

(C) Develop standards of accuracy, timeliness, economy, and efficiency for the provision of the data; and

(D) Ensure confidentiality of data by enforcing appropriate rules and regulations.

(2) To maximize limited resources and to prevent duplication of effort, the division may consider, when appropriate, contracting with private entities for the collection of data as set forth in this section subject to this subchapter.

(c)(1) All state agencies, including health profession licensing, certification, or registration boards and commissions, which collect, maintain, or distribute health data, including data relating to the Medicaid program, shall make available to the division such data as are necessary for the division to carry out its responsibilities under this subchapter or such rules and regulations as may be adopted as provided in § 20-7-305.

(2) If health data are already reported to another organization or governmental agency in the same manner, form, and content or in a manner, form, and content acceptable to the division, the director may obtain a copy of the data from the organization or agency, and no duplicative report need be submitted by the organization.

(3) All hospitals and outpatient surgery centers licensed by the state shall submit information in a form and manner as prescribed by rules

and regulations by the board pursuant to § 20-7-305. However, if the same information is being collected by another state agency, the division shall obtain the data from the other state agency.

History. Acts 1995, No. 670, § 2.

20-7-304. Release of health data.

The Director of the Division of Health of the Department of Health and Human Services may release data collected under this subchapter, except that data released shall not include any information which identifies or could be used to identify any individual patient, provider, institution, or health plan except as provided in § 20-7-305.

History. Acts 1995, No. 670, § 2.

20-7-305. State Board of Health to prescribe rules and regulations — Data collected not subject to discovery.

(a) The State Board of Health shall prescribe and enforce such rules and regulations as may be necessary to carry out this subchapter, including the manner in which data are collected, maintained, compiled, and disseminated, and including such rules as may be necessary to promote and protect the confidentiality of data reported under this subchapter.

(b) Data provided, collected, or disseminated under this subchapter which identifies, or could be used to identify, any individual patient, provider, institution, or health plan shall not be subject to discovery pursuant to the Arkansas Rules of Civil Procedure or the Freedom of Information Act of 1967, § 25-19-101 et seq.

(c)(1) The Department of Health and Human Services may provide data only for purposes of research and aggregate statistical reporting to the Arkansas Center for Health Improvement and the Agency for Healthcare Research and Quality for its Healthcare Cost and Utilization Project.

(2) The data shall be treated in a manner consistent with all state and federal privacy requirements, including, without limitation, the federal Health Insurance Portability and Accountability Act of 1996 privacy rule, specifically 45 C.F.R. § 164.512(i).

(3) Any identifiable data provided, collected, or disseminated under this subsection shall not be subject to discovery pursuant to the Arkansas Rules of Civil Procedure or the Freedom of Information Act of 1967, § 25-19-101 et seq.

(d) It shall be unlawful for the center to release any patient-identifying information to any nongovernmental third party.

History. Acts 1995, No. 670, § 2; 2005, No. 1434, § 1.

Amendments. The 2005 amendment

substituted “provided, collected, or disseminated under” for “collected under” in (b); and added (c) and (d).

20-7-306. Reports — Assistance.

(a) The Director of the Division of Health of the Department of Health and Human Services shall prepare and submit a biennial report to the Governor and the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor or appropriate subcommittees thereof.

(b) The Division of Health of the Department of Health and Human Services shall provide assistance to the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor or appropriate subcommittees thereof in the development of information necessary in the examination of health care issues.

(c)(1)(A) With regard to §§ 6-18-702(d), 6-60-504(b), and 20-78-206(a)(2)(B), the division shall report every six (6) months to the committees regarding:

(i) The geographic patterns of exemptions, vaccination rates, and exemptions in those areas as well as the rest of the state; and

(ii) Disease incidence of vaccine-preventable diseases collected by the division.

(B) The collection of exemption information shall begin January 4, 2004.

(C) Reports shall begin at the first interim meeting of the committees.

(2)(A) The division shall facilitate a study to include religious, philosophical, and medical exemption patterns and the incidence of disease in the state.

(B) The study shall include:

(i) An evaluation of the state's immunization policies;

(ii) The incidence of disease in Arkansas and other states; and

(iii) A risk evaluation of specific populations in Arkansas.

(C) The study shall begin July 3, 2003, and shall be completed by December 31, 2004.

(D) The study shall be a collaborative effort coordinated by the division.

(3) The division shall issue a final assessment on the impact of this subsection to the committees during the 2005 regular session of the General Assembly.

History. Acts 1995, No. 670, § 2; 1997, No. 179, § 22; 2003, No. 999, § 4.

Amendments. The 2003 amendment added (c).

RESEARCH REFERENCES

UALR L.J. Survey of Legislation, 2003 Arkansas General Assembly, Education

Law, Immunization Requirements, 26 UALR L.J. 384.

20-7-307. Penalties.

(a)(1) Any person, firm, corporation, organization, or institution that violates any of the provisions of this subchapter or any rules and regulations promulgated under this subchapter regarding confidentiality of information shall be guilty of a Class C misdemeanor.

(2) Each day of violation shall constitute a separate offense.

(b) Any person, firm, corporation, organization, or institution knowingly violating any of the provisions of this subchapter or any rules and regulations promulgated under this subchapter shall be guilty of a violation and upon conviction shall be punished by a fine of not more than five hundred dollars (\$500).

(c)(1) Every person, firm, corporation, organization, or institution that violates any of the rules and regulations adopted by the State Board of Health or that violates any provision of this subchapter may be assessed a civil penalty by the board.

(2) The civil penalty shall not exceed two hundred fifty dollars (\$250) for each violation.

(3) However, no civil penalty may be assessed until the person charged with the violation has been given the opportunity for a hearing on the violation pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1995, No. 670, § 3; 2005, No. 1994, § 243.

Amendments. The 2005 amendment, in (a)(1), substituted “under this subchapter” for “hereunder,” inserted “Class C” and deleted “and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars (\$100) nor more than

five hundred dollars (\$500) or by imprisonment not exceeding one (1) month, or both” from the end; and substituted “under this subchapter shall be guilty of a violation and upon” for “hereunder shall be guilty of a misdemeanor and, upon a plea of guilty, a plea of nolo contendere, or” in (b).

20-7-308. Repealer.

All laws and parts of laws in conflict with this subchapter are repealed, except that nothing in this subchapter shall be interpreted to repeal any provision which authorizes the Health Services Agency to gather such data as may be necessary to conduct permit-of-approval activities.

History. Acts 1995, No. 670, § 6.

20-7-309. List of substances used to alter samples in drug or alcohol screening tests.

The Division of Health of the Department of Health and Human Services shall maintain and update as part of its database under this subchapter a list of substances that may be used to adulterate urine or other bodily fluids that may be used in or used to interfere with a drug or alcohol screening test.

History. Acts 2003, No. 750, § 1.

A.C.R.C. Notes. References to “this subchapter” in §§ 20-7-301 — 20-7-308

may not apply to this section, which was enacted subsequently.

20-7-310. Construction with other laws.

Nothing in this act shall be construed to encourage, conflict, or otherwise interfere with the preemption of state and local laws under any federal laws or United States Department of Transportation regulations related to drug testing procedures and confidentiality.

History. Acts 2003, No. 750, § 2.

Publisher’s Notes. References to “this subchapter” in §§ 20-7-301 — 20-7-308 may not apply to this section, which was enacted subsequently.

Acts 2003, No. 750, § 2, is also codified as § 5-60-202.

Meaning of “this act”. Acts 2003, No. 750, codified as §§ 5-60-201, 5-60-202, 20-7-309 and 20-7-310.

SUBCHAPTER 4 — DEPARTMENT OF HEALTH PUBLIC HEALTH LABORATORY ACT OF 2003

SECTION.

20-7-401. Title.

20-7-402. Purpose.

20-7-403. Definitions.

20-7-404. Approval of construction.

20-7-405. Financing of construction and renovation.

20-7-406. Security for indebtedness.

20-7-407. Fees.

SECTION.

20-7-408. Disposition of certain fees.

20-7-409. State Board of Health Public Health Laboratory Construction Fund.

20-7-410. Investment of funds.

20-7-411. Formation of contracts.

20-7-412. Limitations on liability.

20-7-401. Title.

This subchapter shall be known and may be cited as the “Department of Health Public Health Laboratory Act of 2003”.

History. Acts 2003, No. 1723, § 1.

A.C.R.C. Notes. The Department of Health is now the Division of Health of the

Department of Health and Human Services.

20-7-402. Purpose.

It is the purpose of this subchapter to better serve the citizens of Arkansas by providing for the construction and equipping of a modern public health laboratory.

History. Acts 2003, No. 1723, § 2.

20-7-403. Definitions.

As used in this subchapter:

(1) “Authority” means the Arkansas Development Finance Authority;

(2) “Authorizing resolution” means the resolution or resolutions adopted by the State Board of Health authorizing the loan;

(3) “Board” means the State Board of Health;

(4) “Building” means the state building of the Division of Health of the Department of Health and Human Services located on West Markham Street in Little Rock;

(5) “Construct” means to acquire, construct, reconstruct, remodel, install, and equip any lands, buildings, structures, improvements, or other property, whether real, personal, or mixed, useful in connection with the expansion, by any method and manner as may be authorized by law, and in the case of the acquisition of equipment and other property of a medical, laboratory, or technical nature, by any method as the board or the Director of the Division of Health of the Department of Health and Human Services determines to be necessary or desirable to accomplish the power, purposes, and authorities set forth in this subchapter and without regard to the provisions of other laws pertaining to the construction and acquisition of property by state agencies;

(6) “Construction fund” means the State Board of Health Public Health Laboratory Construction Fund;

(7) “Director” means the Director of the Division of Health of the Department of Health and Human Services;

(8) “Fee revenues” means all revenues derived from all or any of the fees;

(9) “Fees” means the fees generated under this subchapter that represent an increase to the allowable fees set forth in § 20-7-123;

(10) “Laboratory” means a public health laboratory that is a modern stand-alone public health laboratory to be constructed on the existing site of the Division of Health of the Department of Health and Human Services located on West Markham Street in Little Rock;

(11) “Loan” means the loan which the board may effect from the authority by the terms of this subchapter;

(12) “Renovation” means the renovation and improvement of the building, including the renovation and alteration of existing properties, whether real, personal, or mixed;

(13) “Revenue fund” means the State Board of Health Laboratory Revenue Fund; and

(14) “Revenue loan fund” means the State Board of Health Laboratory Revenue Loan Fund.

History. Acts 2003, No. 1723, § 3.

20-7-404. Approval of construction.

(a)(1) The laboratory shall be constructed subject to approval by the State Board of Health.

(2) The board may take such action as may be appropriate for the renovation of the building and any facilities necessarily related to the building.

(b) Subject to the approval of the board, the plans, specifications, and estimates of cost for the laboratory and renovation of the building shall be developed by the Director of the Division of Health of the Depart-

ment of Health and Human Services, and the director may employ architects and other like professional and technical assistance as determined to be necessary for the construction of the laboratory and renovation of the building.

(c) The board and the director may take such action as may be appropriate for the construction of the laboratory and renovation of the building to accomplish the purposes of this subchapter and may engage legal, technical, and other assistance as necessary.

History. Acts 2003, No. 1723, § 4.

20-7-405. Financing of construction and renovation.

(a)(1) To finance the construction of the laboratory and renovation of the building, the State Board of Health may enter into a loan from the Arkansas Development Finance Authority in the principal amount of not more than twenty-six million dollars (\$26,000,000) under the Arkansas Development Finance Authority Act, § 15-5-101 et seq.

(2) The amount and purpose of the loan shall be approved by the board in an authorizing resolution, copies of which shall be maintained in the records of the board and of the authority.

(b) The loan shall bear interest at a rate determined by the rate of interest on funds borrowed by the authority to fund the loan but not to exceed the lesser of ten percent (10%) per annum or the maximum rate of interest permitted by the Arkansas Constitution.

(c) The loan shall mature over a period of not more than thirty (30) years.

(d) The board and the director may execute and deliver agreements, instruments, and other undertakings and writings and take such action as may be appropriate to evidence the loan and the security for the loan and to carry out this subchapter.

History. Acts 2003, No. 1723, § 5.

20-7-406. Security for indebtedness.

(a) The payment and other obligations of the State Board of Health under and with respect to the loan shall be secured by a pledge of the fee revenues, subject to the terms of this subchapter and the reserved power to release fee revenues as set forth in this subchapter.

(b) The loan shall be an obligation of the board only and shall not constitute an indebtedness for which the faith and credit of the State of Arkansas or any of its revenues are pledged.

(c) The loan shall not be secured by a lien on any land, building, or other property belonging to the State of Arkansas.

(d) The loan shall not constitute an indebtedness within the meaning of any constitutional or statutory limitation.

History. Acts 2003, No. 1723, § 6.

20-7-407. Fees.

In addition to the fees authorized by § 20-7-123(b)(1)(H)-(J), the following fees shall be collected and credited to the State Board of Health Laboratory Revenue Fund:

(1) A fee of seven dollars (\$7.00) collected by the State Registrar of Vital Records for the making and certification of any birth certificate or record;

(2) A fee of five dollars (\$5.00) collected for the making and certification of each additional copy of any birth certificate or records;

(3) A fee of six dollars (\$6.00) collected by the state registrar for the making and certification of a single copy of a death certificate;

(4) A fee of seven dollars (\$7.00) collected by the state registrar for the making and certification of each additional copy of a death certificate;

(5) A fee of five dollars (\$5.00) collected by the state registrar for the making and certification of any marriage or divorce certificate or record;

(6) A fee of five dollars (\$5.00) collected by the state registrar for the making and certification of each additional copy of any marriage or divorce certificate or record;

(7) A fee of seven dollars (\$7.00) collected by the state registrar for an examination and search of the files for any birth record;

(8) A fee of five dollars (\$5.00) collected by the state registrar for an examination and search of the files for any marriage or divorce record; and

(9) A fee of six dollars (\$6.00) collected by the state registrar for an examination and search of the files for any death record.

History. Acts 2003, No. 1723, § 7.

2003, No. 1723, subsection (a) began: "Ef-

Publisher's Notes. As enacted by Acts

fective September 1, 2003."

20-7-408. Disposition of certain fees.

(a)(1) Except as set forth in this subchapter, all fee revenues shall be treated as cash funds and shall not be deposited into the State Treasury, but shall be deposited as and when received into a bank or banks approved by the State Board of Health or the Director of the Division of Health of the Department of Health and Human Services in an account or accounts of the board designated the "State Board of Health Laboratory Revenue Fund".

(2) So long as the loan is outstanding, all moneys in the State Board of Health Laboratory Revenue Fund shall not be subject to the provisions of §§ 19-4-801 — 19-4-806 and shall be deposited, handled, and disbursed as set forth in this subchapter.

(b) Moneys held in the State Board of Health Laboratory Revenue Fund shall be withdrawn and deposited no less frequently than bimonthly as follows and in the following order of priority:

(1) An annual amount sufficient to provide for principal, interest, servicing fees, and reserve requirements with respect to the loan but

not to exceed two million six hundred thousand dollars (\$2,600,000) per fiscal year:

(A) Prior to the commencement of the loan, in the State Board of Health Public Health Laboratory Construction Fund; and

(B) Beginning upon commencement of the loan, in an account or accounts in the name of the board or the Arkansas Development Finance Authority, as determined by the board and the authority, designated the "State Board of Health Laboratory Revenue Loan Fund"; and

(2) Any balance remaining shall be distributed fifty percent (50%) to the Public Health Fund and fifty percent (50%) to the State Health Department Building and Local Grant Trust Fund.

(c)(1) All funds held in the State Board of Health Laboratory Revenue Fund, the State Board of Health Laboratory Revenue Loan Fund, and the State Board of Health Public Health Laboratory Construction Fund shall be deemed to be cash funds, shall not be deposited into the State Treasury, and shall be transferred, deposited, and applied as set forth in this subchapter without the necessity of appropriation.

(2) All transfers from the State Board of Health Laboratory Revenue Fund and the State Board of Health Public Health Laboratory Construction Fund shall be made by or at the direction of the director.

(3) All transfers from the State Board of Health Laboratory Revenue Loan Fund shall be made by:

(A) The director; or

(B) The authority, if approved by the board.

(d) So long as the loan is outstanding, funds held in the State Board of Health Laboratory Revenue Loan Fund shall be used solely for the purpose of paying and providing for the principal of, interest on, and servicing fees, if any, in connection with the loan and providing for the creation and maintenance of necessary reserves. The funds may be pledged by the board to secure the loan and may be pledged and used by the authority to pay and secure bonds issued by the authority to finance the construction.

(e)(1) So long as the loan is outstanding, all fees shall be imposed and all fee revenues shall be collected and applied as provided in this subchapter.

(2) However, particular fees may be reduced or eliminated so long as remaining fees are increased or new fees are added to the end that the aggregate annual amount of fee revenues shall always equal at least three million dollars (\$3,000,000).

(f) Upon payment or discharge of the loan and all bonds issued by the authority under this subchapter the fees authorized by this subchapter shall terminate.

History. Acts 2003, No. 1723, § 8.

20-7-409. State Board of Health Public Health Laboratory Construction Fund.

The proceeds of the loan other than amounts required to establish required reserves, to pay interest on the loan for a period not to exceed one (1) year, or to pay costs of the loan and of issuing bonds, all of which shall be set forth in written directions executed by the Director of the Division of Health of the Department of Health and Human Services, shall be deposited as cash funds into an account of the State Board of Health designated the "State Board of Health Public Health Laboratory Construction Fund" and disbursed by the director for the construction of the expansion.

History. Acts 2003, No. 1723, § 9.

20-7-410. Investment of funds.

(a) All moneys held at any time in the State Board of Health Laboratory Revenue Fund and the State Board of Health Public Health Laboratory Construction Fund shall be invested and reinvested to the extent feasible, as directed by the Director of the Division of Health of the Department of Health and Human Services.

(b) All moneys held in the State Board of Health Laboratory Revenue Loan Fund shall be invested and reinvested to the extent feasible, as directed by the Arkansas Development Finance Authority, in securities which are eligible for the securing of public deposits under § 19-8-203, subject in all cases to the term of the loan and of bonds issued by the authority.

History. Acts 2003, No. 1723, § 10.

20-7-411. Formation of contracts.

(a) The authorizing resolution and each agreement or other writing executed and delivered pursuant to it or to this subchapter, together with this subchapter, shall constitute a contract between the State Board of Health and the Arkansas Development Finance Authority, and the obligations of the board may be enforced by mandamus or other equitable or legal remedy.

(b) The obligations of the board shall be freely assignable by the authority, provided that the board is notified in writing of the assignment.

History. Acts 2003, No. 1723, § 11.

20-7-412. Limitations on liability.

Neither the Director of the Division of Health of the Department of Health and Human Services nor any member of the State Board of Health shall be personally liable on the loan or on account of any of the obligations or actions undertaken in connection with the loan, or for any

damages sustained by anyone with respect to the obligations or actions, unless he or she shall have acted with a corrupt intent.

History. Acts 2003, No. 1723, § 12.

CHAPTER 8

STATE HEALTH AGENCIES AND PROGRAMS

SUBCHAPTER.

1. HEALTH SERVICES PERMIT AGENCY.
2. ARKANSAS SPINAL CORD COMMISSION.
3. GREAT STRIDES GRANT PROGRAM.
4. HEALTH DATA INITIATIVE.

CASE NOTES

Cited: UHS of Ark., Inc. v. City of Sherwood, 296 Ark. 97, 752 S.W.2d 36 (1988).

SUBCHAPTER 1 — HEALTH SERVICES PERMIT AGENCY

SECTION.

- 20-8-101. Definitions.
- 20-8-102. Health Services Permit Commission — Creation — Members — Meetings.
- 20-8-103. Health Services Permit Commission — Powers and duties.
- 20-8-104. Health Services Permit Agency — Powers and duties.
- 20-8-105. Director.
- 20-8-106. Health Services Program — Permits generally.
- 20-8-107. Expansion of facilities or services.
- 20-8-108. Fees and fines.

SECTION.

- 20-8-109. Approval of new projects — Repeal of Acts 1975, No. 558, § 5 — Transfer of duties.
- 20-8-110. Collection and dissemination of health data.
- 20-8-111. Transfer of Developmental Disabilities Planning Council attributes to other agency.
- 20-8-112. Additional transfer of Developmental Disabilities Planning Council attributes to other agency.
- 20-8-113. Findings.
- 20-8-114. [Repealed.]

A.C.R.C. Notes. References to “this subchapter” in §§ 20-8-101 — 20-8-110 may not apply to § 20-8-111, § 20-8-112 or § 20-8-113, which were enacted subsequently.

Publisher’s Notes. Former subchapter 1 of this chapter, concerning state health planning and development, was partially repealed by Acts 1987, No. 593, § 10, which repealed former §§ 20-8-101 — 20-8-103 and 20-8-114. The remainder of the

subchapter, §§ 20-8-104 — 20-8-113, was repealed by Acts 1987, No. 593, § 9, as amended by Acts 1987 (1st Ex. Sess.), No. 40, § 11. The former subchapter was derived from the following sources:

20-8-101. Acts 1975, No. 558, §§ 1, 2; 1981, No. 808, § 1; A.S.A. 1947, §§ 82-2307, 82-2308.

20-8-102. Acts 1975, No. 558, § 6; 1981, No. 808, § 4; 1985, No. 857, § 2; 1985, No. 948, § 2; A.S.A. 1947, § 82-2312.

20-8-103. Acts 1975, No. 558, § 3; 1981, No. 808, § 2; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; A.S.A. 1947, §§ 6-623 — 6-626, 82-2309.

20-8-104. Acts 1975, No. 558, § 5; 1981, No. 808, § 3; A.S.A. 1947, § 82-2311.

20-8-105. Acts 1975, No. 558, § 5; 1981, No. 808, § 3; A.S.A. 1947, § 82-2311.

20-8-106. Acts 1975, No. 558, § 5; 1981, No. 808, § 3; A.S.A. 1947, § 82-2311.

20-8-107. Acts 1975, No. 558, § 5; 1981, No. 808, § 3; A.S.A. 1947, § 82-2311.

20-8-108. Acts 1975, No. 558, § 5; 1981, No. 808, § 3; A.S.A. 1947, § 82-2311.

20-8-109. Acts 1975, No. 558, § 5; 1981, No. 808, § 3; 1985, No. 857, § 1; 1985, No. 948, § 1; A.S.A. 1947, § 82-2311.

20-8-110. Acts 1975, No. 558, § 5; 1981, No. 808, § 3; 1985, No. 857, § 1; 1985, No. 948, § 1; A.S.A. 1947, § 82-2311.

20-8-111. Acts 1975, No. 558, § 5; 1981, No. 808, § 3; 1985, No. 857, § 1; 1985, No. 948, § 1; A.S.A. 1947, § 82-2311.

20-8-112. Acts 1975, No. 558, § 5; 1981, No. 808, § 3; 1985, No. 857, § 1; 1985, No. 948, § 1; A.S.A. 1947, § 82-2311.

20-8-113. Acts 1975, No. 558, § 5; 1981, No. 808, § 3; A.S.A. 1947, § 82-2311.

20-8-114. Acts 1977, No. 831, §§ 1-3; A.S.A. 1947, §§ 82-2314 — 82-2316.

Effective Dates. Acts 1987, No. 593, § 13: Apr. 4, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is an immediate and urgent need to effect revisions in the health planning system of the State, health planning has a direct impact on the public health, welfare and safety; that an emergency is hereby declared to exist, and this Act is declared to be necessary for the preservation for the public peace, health and safety and shall become effective from and after its passage and approval."

Acts 1987 (1st Ex. Sess.), No. 40, § 15: June 19, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 593 of 1987 contained technical errors and omissions which, if uncorrected, will result in the loss of federal dollars in assisting the elderly and needy population of this state with their health care needs; that an effective health planning system is needed in this state; that health planning has a direct impact on the public health, welfare and safety; that an emergency is hereby declared to exist, and this Act is declared

to be necessary for the preservation for the public peace, health and safety and shall become effective from and after its passage and approval."

Acts 1989, No. 107, § 7: Feb. 20, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the state does not have a statewide clearing house for health data; that the establishment of such a clearing house is essential to adequately respond to the health needs of the citizens of the state; that this Act creates a statewide health data clearing house; and that the collection of health data should begin immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 533, § 4: Mar. 14, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh General Assembly of the State of Arkansas that there is an immediate and urgent need to effect revisions in the health planning system of the state; that there are no promulgated regulations and there has been confusion regarding the issuance of permits for approval required for certain services, and that care to some patients has been interrupted. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation for the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 623, § 6: Mar. 19, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly that residential care facilities are now under the jurisdiction of the Health Service Commission; that representation on the commission by those covered by the commission is fundamental in a democratic society; that the immediate appointment of a representative on such commission is necessary to preserve the rights of those facilities being regulated by the commission. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect upon passage and approval."

Acts 1993, No. 821, § 13: July 1, 1993.

Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1993 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1993 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1993."

Acts 1995, No. 77, § 13: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1995 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1995 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995."

Acts 1997, No. 179, § 38: Feb. 17, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint Interim Committee on Public Health, Welfare, and Labor and in its place established the House Interim Committee and Senate Interim Committee on Public Health, Welfare, and Labor; that various sections of the Arkansas Code refer to the Joint Interim Committee on Public Health, Welfare, and Labor and should be corrected to refer to the House and Senate Interim Committees on Public Health,

Welfare, and Labor; that this act so provides; and that this act should go into effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 1025, § 6: Apr. 2, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that this act excludes certain transitional pediatric rehabilitation facilities from the permit of approval process; and that this act is immediately necessary to allow such facilities to proceed without delay. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the

period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it

shall become effective on the date the last house overrides the veto."

CASE NOTES

ANALYSIS

Legislative intent.

Federal and state requirements.

Legislative Intent.

The legislative intent of Acts 1987 (1st Ex. Sess.), No. 40, that there be a prospective moratorium on all licensing was clear; the reinstatement of the permit of approval requirement was also prospective, but it was not clearly intended to apply to applications which had been submitted while Act 593 of 1987 was in effect. *Scott v. Consolidated Health Mgt., Inc.*, 297 Ark. 601, 764 S.W.2d 434 (1989).

Federal and State Requirements.

The federal and state laws restricting hospital construction are not mere guidelines which the director of the state

agency is free to disregard. *Statewide Health Coordinating Council v. General Hosps.*, 280 Ark. 443, 660 S.W.2d 906 (1983), cert. denied, 467 U.S. 1205, 104 S. Ct. 2386, 81 L. Ed. 2d 344 (1984) (decision under prior law).

The principal goals and objectives of the entire federal and state program restricting hospital construction are to reduce the cost of hospital care by prohibiting the construction of new hospitals that would exceed the bed-to-population limit. *Statewide Health Coordinating Council v. General Hosps.*, 280 Ark. 443, 660 S.W.2d 906 (1983), cert. denied, 467 U.S. 1205, 104 S. Ct. 2386, 81 L. Ed. 2d 344 (1984) (decision under prior law).

Cited: *UHS of Ark., Inc. v. Charter Hosp.*, 297 Ark. 8, 759 S.W.2d 204 (1988).

20-8-101. Definitions.

As used in this subchapter:

- (1) "Agency" means the Health Services Permit Agency;
- (2) "Category of services" or "health services" means "home health care services" as defined by § 20-10-801;
- (3) "Commission" means the Health Services Permit Commission;
- (4) "Conversion of services" means an alteration of the category of services offered by a health facility;
- (5) "Director" means the Director of the Health Services Permit Agency;
- (6)(A) "Health facility" or "health facilities" means "long-term care facility" as defined by § 20-10-101 or a "home health care services agency" as defined by § 20-10-801.
- (B) "Health facility" or "health facilities" shall not mean and nothing in this subchapter shall be deemed to require a permit of approval for or to otherwise regulate in any manner the licensure of:
 - (i) A "hospital" as defined by and licensed pursuant to § 20-9-201, except when a hospital seeks to add long-term care beds or to convert acute beds to long-term care beds or to add home health services pursuant to a letter of intent filed with the Division of Health of the Department of Health and Human Services after February 15, 1993, or to expand home health services pursuant to a letter of intent filed with the Division of Health of the Department of Health and Human Services after February 15, 1993;

- (ii) Offices of private physicians and surgeons;
- (iii) Outpatient surgery or imaging centers;
- (iv) Post-acute head injury retraining and residential care facilities or establishments operated by the federal government or any agency thereof;
- (v) Free-standing radiation therapy centers;
- (vi) Expansion, not to exceed fifteen (15) beds, of the twenty-five-bed nonprofit intermediate care facility for the mentally retarded that provides transitional rehabilitation for pediatric patients;
- (vii) Residences for four (4) or fewer individuals with developmental disabilities who receive support and services from nonprofit providers currently licensed by the Division of Developmental Disabilities Services of the Division of Health of the Department of Health and Human Services;
- (viii) Any facility which is conducted by and for those who rely exclusively upon treatment by prayer for healing in accordance with the tenets or practices of any recognized religious denomination; or
- (ix) Any bed or facility used to provide care to delinquent juveniles committed into the care of the Division of Youth Services of the Department of Health and Human Services.

(C) "Health facility" shall not include offices of private physicians and surgeons, outpatient surgery or imaging centers, establishments operated by the federal government or any of its agencies, free-standing radiation therapy centers, or any facility which is conducted by and for those who rely exclusively upon treatment by prayer alone for healing in accordance with the tenets or practices of any recognized religious denomination; and

(7) "Transitional rehabilitation" means rehabilitation that typically results in discharge within twenty-four (24) months after the date of admission.

History. Acts 1987, No. 593, § 1; 1987 (1st Ex. Sess.), No. 40, §§ 1, 2; 1989, No. 422, §§ 1, 2, 7; 1993, No. 472, § 1; 1997, No. 1025, § 1; 2001, No. 1583, § 2; 2001, No. 1800, § 6.

Amendments. The 2001 amendment by No. 1583 added (6)(B)(ix) and made related changes.

The 2001 amendment by No. 1800 inserted "Permit" following "Health Services" throughout; substituted "§ 20-10-101(8)" for "§ 20-10-101(7)" in (6)(A); and, in (6)(B)(i), substituted "§ 20-9-201(6)" for "§ 20-9-201(3)" and "Department of Health" for "department."

20-8-102. Health Services Permit Commission — Creation — Members — Meetings.

(a) There is established a Health Services Permit Commission.

(b) The Health Services Permit Commission shall be composed of the following membership appointed by the Governor and confirmed by the Senate:

- (1) A practicing physician;
- (2) A representative of the Division of Health of the Department of Health and Human Services;
- (3) A member of the Arkansas Hospital Association;

- (4) A member of the Arkansas Health Care Association;
 - (5) A member of the Arkansas Chapter of the American Association of Retired Persons;
 - (6) A member of the HomeCare Association of Arkansas;
 - (7) A consumer knowledgeable in business health insurance;
 - (8) A member of the Arkansas Residential Assisted Living Association; and
 - (9) A member of the Arkansas State Hospice Association.
- (c)(1) All appointments shall be for four-year terms.
- (2) No member shall be appointed to serve more than two (2) consecutive full terms.

(d) The members shall serve without pay, but those members not employed by the State of Arkansas may receive expense reimbursement in accordance with § 25-16-901 et seq.

(e) The commission shall meet at least quarterly and at such other times as necessary to carry out its duties under this subchapter. The commission shall elect one (1) of its members as chair, and by appropriate adoption of bylaws and rules, may provide for the time, place, and manner of calling its meetings.

History. Acts 1987, No. 593, § 2; 1987 (1st Ex. Sess.), No. 40, § 3; 1991, No. 623, § 1; 1997, No. 250, § 179; 2001, No. 632, § 1; 2001, No. 1800, § 7.

A.C.R.C. Notes. Acts 1987, No. 593, § 2, provided, in part, that the members of the Health Services Commission would be appointed by the Governor (except for the legislative members or their designees) within 30 days of April 4, 1987. However, Acts 1987 (1st Ex. Sess.), No. 40, § 3, provided, in part, that the Governor would appoint the members within 30 days of June 19, 1987. Both acts further provided that the Governor shall have the power to stagger the terms of the initial members so that two members serve for one year after appointment, three members serve two years after appointment, and two members serve for three years after appointment.

Acts 1987 (1st Ex. Sess.), No. 40, § 12, provided that all Health Services Commission members appointed prior to June

19, 1987, under Acts 1987, No. 593, would continue to serve their full terms and that it was not the intent of the General Assembly in the passage of this act to reconstitute the existing Health Services Commission.

Publisher's Notes. Acts 1991, No. 623, § 2, provided: "The member appointed from the Association of Residential Care Facilities shall be appointed to a three (3) year term to commence April, 1991."

Amendments. The 2001 amendment by Nos. 632 and 1800 inserted "Permit" following "Health Services" throughout; substituted "HomeCare Association of Arkansas" for "Arkansas Association of Home Health Agencies" in (b)(6); substituted "Residential Assisted Living Association" for "Association of Residential Care Facilities" in (b)(8); added (b)(9) and made related changes; substituted "four-year" for "three-year" in present (c)(1); added (c)(2); and, in (e), substituted "chair" for "chairman" and made minor stylistic and punctuation changes.

20-8-103. Health Services Permit Commission — Powers and duties.

(a) The Health Services Permit Commission shall evaluate the availability and adequacy of health facilities and health services as they relate to long-term care facilities and home health care service agencies in this state.

(b) The commission shall designate those locales or areas of the state in which, due to the requirements of the population or the geography of the area, the health service needs of the population are underserved.

(c) The commission may specify, within locales or areas, categories of health services which are underserved and overserved due to the composition or requirements of the population or the geography of the area.

(d) The commission shall develop policies and adopt criteria, including time limitations, to be utilized by the Health Services Permit Agency in the review of applications and the issuing of permits of approval for a long-term care facility or a home health care service agency as provided in this subchapter.

(e) The commission may define certain underserved locales or areas or categories of services within underserved locales or areas to be exempt for specified periods of time from the permit of approval requirement.

(f) The commission may set application fees for permit of approval applications to be charged and collected by the agency.

(g)(1) Upon appeal by the applicant or an interested party, the commission shall conduct hearings on decisions by the agency within ninety (90) days of the agency decision. The commission shall render its final decision within fifteen (15) days of the close of the hearing. Failure of the commission to take final action within these time periods shall be considered a ratification of the agency decision and shall constitute the final decision of the commission from which an appeal to circuit court may be filed.

(2) Neither a competitor of a successful applicant for a permit of approval nor any other party shall have the right to appeal the commission's decision to grant a permit of approval.

History. Acts 1987, No. 593, § 3; 1987 (1st Ex. Sess.), No. 40, §§ 4, 5; 1989, No. 422, §§ 3-5; 2001, No. 1800, § 8.

Amendments. The 2001 amendment inserted "Permit" following "Health Ser-

vices" in (a); substituted "Health Services Permit Agency" for "agency" in (d); deleted former (f); redesignated former (g) and (h) as present (f) and (g)(1); rewrote present (g)(1); and added (g)(2).

CASE NOTES

ANALYSIS

Review.

- Agency recommendation.
- Judicial.

Review.

—Agency Recommendation.

Under former subsection (f), the commission must review agency recommendations and either endorse or reject them, whether the agency makes a timely recommendation on an application, or fails to act under § 20-8-104(d), in which case the

application is deemed approved because of the agency's inaction. *Riverways Home Care v. Arkansas Health Servs. Comm'n*, 309 Ark. 452, 831 S.W.2d 611 (1992) (decision under prior law).

This chapter provides administrative procedural redress for review of the commission's approval of a permit to construct a nursing home facility, as is evident from the provisions of this section by which the General Assembly provided for the review of agency recommendations, which the commission may endorse or reject; while subsection (g)(1) provides that the com-

mission, upon appeal by the applicant, must conduct hearings on permits of approval by the agency, there is nothing in this language, or that in former subsection (f), that would prevent an applicant from requesting the review of the agency's recommendations or the approval of a permit. *Regional Care Facilities, Inc. v. Rose Care, Inc.*, 322 Ark. 780, 912 S.W.2d 406 (1995) (decision under prior law).

—Judicial.

Provided the commission follows its procedures and considers its own review criteria, the ultimate decision to grant a permit of approval is a discretionary one for the commission to make; the court will uphold the commission's exercise of its

discretion in reaching this decision if it is supported by substantial evidence and is not arbitrary, capricious, or an abuse of its discretion. *Beverly Enterprises-Arkansas, Inc. v. Arkansas Health Servs. Comm'n*, 308 Ark. 221, 824 S.W.2d 363 (1992).

To set aside the commission's action as arbitrary and capricious, a party must prove that the action was a willful and unreasoning action, made without consideration and with a disregard of the facts or circumstances of the case. *Beverly Enterprises-Arkansas, Inc. v. Arkansas Health Servs. Comm'n*, 308 Ark. 221, 824 S.W.2d 363 (1992).

Cited: *ABC Home Health of Ark., Inc. v. Arkansas Health Servs. Comm'n*, 326 Ark. 573, 932 S.W.2d 331 (1996).

20-8-104. Health Services Permit Agency — Powers and duties.

(a) There is created and established the Health Services Permit Agency, which shall be an independent agency under the supervision and control of the Governor.

(b) The agency shall possess and exercise such duties and powers as necessary to implement the policy and procedures adopted by the Health Services Permit Commission.

(c) The agency shall review all applications for permits of approval and approve or deny the application within ninety (90) days from the date the application is deemed complete and submitted for review.

(d) The State of Arkansas shall not participate in the capital expenditures review program, otherwise known as the 1122 Program, unless it becomes mandatory for continuation in federal programs authorized under Title V of the Social Security Act, 42 U.S.C. § 701 et seq., Title XIV of the Social Security Act, 42 U.S.C. § 1351 et seq., and Title XVII of the Social Security Act, 42 U.S.C. § 1391 et seq., for all states.

(e) The agency shall assist the commission in the performance of its duties under this subchapter.

History. Acts 1987, No. 593, § 4; 2001, No. 1800, § 9.

Amendments. The 2001 amendment inserted "Permit" in (a) and (b); deleted

former (c) and redesignated the remaining subsections accordingly; and rewrote present (c).

CASE NOTES

ANALYSIS

Review.

—Administrative.

—Judicial.

Review.

Permits of approval will only be issued, denied or withdrawn by the agency with

the commission's endorsement or under the direction of an appropriate court. *Riverways Home Care v. Arkansas Health Servs. Comm'n*, 309 Ark. 452, 831 S.W.2d 611 (1992) (decision under prior law).

—Administrative.

Under former § 20-8-103(f), the commission must review agency recommenda-

tions and either endorse or reject them, whether the agency makes a timely recommendation on an application, or fails to act under subsection (d), in which case the application is deemed approved because of the agency's inaction. *Riverways Home Care v. Arkansas Health Servs. Comm'n*, 309 Ark. 452, 831 S.W.2d 611 (1992) (decision under prior law).

—Judicial.

On review of agency decisions, the court determines whether an agency's interpretation of its regulations is reasonable and, although not binding on the court, an agency's interpretation of its own rules is persuasive. *Beverly Enterprises-Arkansas, Inc. v. Arkansas Health Servs. Comm'n*, 308 Ark. 221, 824 S.W.2d 363 (1992).

Arkansas Health Services Commission's new rule that allowed the Commission to disregard the overall county occupancy requirement one time in order to approve a 70-bed nursing home facility in a single county where the projected need for the county exceeded the "existing" beds by 250 or more beds was not arbitrary special or local legislation because it was conceivable that other counties in the state would, in the future, come under the rule's provisions. *Ark. Health Servs. Comm'n v. Reg'l Care Facilities, Inc.*, 351 Ark. 331, 93 S.W.3d 672 (2002).

Cited: *Arkansas Health Servs. Comm'n v. Area Agency on Aging*, 303 Ark. 38, 792 S.W.2d 321 (1990); *ABC Home Health of Ark., Inc. v. Arkansas Health Servs. Comm'n*, 326 Ark. 573, 932 S.W.2d 331 (1996).

20-8-105. Director.

There shall be a Director of the Health Services Permit Agency, who shall be the executive head of the agency. The director shall be appointed by the Governor, subject to confirmation by the Senate, and shall serve at the pleasure of the Governor.

History. Acts 1987, No. 593, § 5; 2001, No. 1800, § 10.

A.C.R.C. Notes. Acts 1987, No. 593, § 5, provided, in part, that the director shall be appointed by the Governor within 10 days of April 4, 1987.

Amendments. The 2001 amendment inserted "Permit" following "Health Services."

20-8-106. Health Services Program — Permits generally.

(a)(1)(A) From March 8, 1989, until June 1, 1989, there shall be no new home health care agencies or nursing homes, with the exception of intermediate care facilities for the mentally retarded with fifteen (15) or fewer beds and with the exception of nursing home applications under review by the Health Services Permit Agency on June 2, 1987, and except for nursing homes with thirty-five (35) beds or fewer attached to or a part of hospitals located in cities or towns where no nursing home exists, provided that applicants for such nursing homes shall obtain a permit of approval from the proper authority pursuant to this subchapter, nor shall there be any additional beds licensed for existing nursing homes or intermediate care facilities in this state.

(B) The Health Services Permit Commission may remove any or all of the moratoria anytime after June 1, 1988, provided the commission has duly adopted and promulgated standards for the review of the health facility for which the moratorium is removed.

(C) Nursing home applications under review by the agency on June 2, 1987, shall be considered under this subchapter under updated standards on a county-by-county basis.

(2) No permit of approval shall be required by the agency or the commission for any applicant to qualify for a Class B license, as provided in § 20-10-801 et seq., to operate a home health care services agency, if the agency was serving patients on or before June 30, 1988, and if the agency serves the residents of the county where the principal office is located.

(3) Nursing home applications under review by the agency on June 2, 1987, shall be considered under the provisions of this subchapter under updated standards on a county-by-county basis.

(4)(A) Beginning July 1, 2005, the agency may not accept applications for permits of approval for the construction of new residential care facilities.

(B) Applications for replacement of residential care facilities may not be accepted and processed after July 1, 2005.

(C) However, applications for replacement of residential care facilities shall be accepted for residential care facilities of sixteen (16) beds or fewer but only if the number of beds required for replacement is less than or equal to the number of beds for which the residential care facility was licensed before the application for replacement.

(b)(1)(A) The alteration or renovation of a health facility having an associated capital expenditure of less than five hundred thousand dollars (\$500,000) for nursing homes and not resulting in additional bed capacity shall not require a permit of approval.

(B) However, the agency shall not allow hospital acute care beds to be converted to or allow their license classification to be changed to long-term care beds without going through the permit-of-approval process.

(2)(A) Permits, legal title, and right of ownership may be transferred with the approval of the commission if the entity presently holding the permit, legal title, or right of ownership has tangible assets of at least two thousand five hundred dollars (\$2,500) that will be transferred with the permit, legal title, or right of ownership.

(3) The application for the permit of approval shall include, but need not be limited to, such information as is necessary to determine:

(A) Whether the proposed project is needed or projected as being necessary to meet the needs of the locale or area in terms of the health care required for the population or geographic region;

(B) Whether the proposed project can be adequately staffed and operated when completed;

(C) Whether the proposed project is economically feasible; and

(D) Whether the project will foster cost containment through improved efficiency and productivity.

(c) If the application is granted, the agency shall issue a permit of approval, if it finds that the proposed project meets the criteria for approval as set by the commission. If the application is denied, the

agency shall send written notice of the denial to the applicant which sets forth the criteria that the proposed project failed to meet.

(d) Any applicant or interested party seeking review of a final agency decision regarding permits of approval, movement of beds, or transfer of permits of approval shall file a written appeal for hearing before the commission on an approved form within thirty (30) days of the receipt of the agency decision.

(e) Appeals to the commission shall be conducted in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1987, No. 593, § 6; 1987 (1st Ex. Sess.), No. 40, § 6; 1989, No. 422, § 6; 1989, No. 533, § 1; 2001, No. 1800, § 11; 2005, No. 1669, § 1.

A.C.R.C. Notes. Acts 1987 (1st Ex. Sess.), No. 40, § 8, provided: "Any hospital licensed by the Arkansas State Department of Health that applied to operate a home health agency under the provisions of Act 593 of 1987 before June 1, 1987, shall be exempt from the permit of approval requirement. Any agency, firm, corporation or organization that applied to operate a home health agency under the provisions of Act 593 of 1987 before June 1, 1987 must reapply to the Health Services Agency no later than June 30, 1987 to be reviewed and exempt from the moratorium contained in Section 6 of Act 593 of 1987 as amended herein."

Acts 1987 (1st Ex. Sess.), No. 40, § 9, provided: "Any hospital desiring to operate a home health agency which is located in a municipality with a population of

more than 10,000 but less than 11,000 in a county with a population of 26,000 or more according to the 1980 Federal decennial census, shall be exempt from the permit of approval requirement and the moratorium contained in Section 6 of Act 593 of 1987 as amended herein."

Amendments. The 2001 amendment, in (a)(1), twice inserted "Permit" following "Health Services" and made minor punctuation changes; in (b), substituted "agency" for "commission," deleted "and licenses are not transferable from one (1) entity to another" following "process" and inserted "However...commission"; and rewrote (d).

The 2005 amendment inserted the present subdivision designations in (a)(1) and (b) and made related changes; added (a)(4) and (b)(2); and deleted the former last sentence in present (b)(1)(B), which read: "However, permits, legal title, and right of ownership may be transferred to another entity with the approval of the commission."

CASE NOTES

ANALYSIS

Construction.
Applicability.
Economic feasibility.
Evidence.
Geographic region.
Issuance improper.

Construction.

This chapter provides administrative procedural redress for review of the commission's approval of a permit to construct a nursing home facility, as is evident from the provisions of § 20-8-103 by which the General Assembly provided for the review of agency recommendations, which the commission may endorse or reject; while former § 20-8-103(h) provided that the

commission, upon appeal by the applicant, must conduct hearings on permits of approval by the agency, there is nothing in this language, or in former § 20-8-103(f), that would prevent an applicant from requesting the review of the agency's recommendations or the approval of a permit. *Regional Care Facilities, Inc. v. Rose Care, Inc.*, 322 Ark. 780, 912 S.W.2d 406 (1995) (decision under prior law).

Applicability.

Act 40 of 1987 does not apply only to the review and issuance of permits of approval; it is applicable to the licensure of projects, as the clear language of the act states, "nor shall there be any additional beds licensed for ... nursing homes ... in this state." Arkansas Dep't of Human

Servs. v. Greene Acres Nursing Homes, Inc., 296 Ark. 475, 757 S.W.2d 563 (1988).

Where nursing home submitted its application to add beds to its facilities during the effective dates of Act 593 of 1987, it qualified for the exception to the permit of approval requirement, however, although its application for a license was complete under Act 593 of 1987 for purposes of processing and review, a license for that application still had not been granted prior to the effective date of Act 40 of 1987, and the clear language of Act 40 of 1987 prohibited the issuance of a license during the effective dates of the moratorium; the fact that Act 40 of 1987 resulted in the denial of licenses with respect to applications submitted prior to its enactment does not mean that it is being applied retroactively but, rather, Act 40 of 1987 is being applied from and after its effective date of June 19, 1987, to impose the legislatively mandated moratorium. Arkansas Dep't of Human Servs. v. Greene Acres Nursing Homes, Inc., 296 Ark. 475, 757 S.W.2d 563 (1988).

Economic Feasibility.

The commission is not required to find a guarantee of success before it grants a permit, but rather to consider an applicant's relative chances for economic success, including approved financing and expressed local support. Beverly Enterprises-Arkansas, Inc. v. Arkansas Health Servs. Comm'n, 308 Ark. 221, 824 S.W.2d 363 (1992).

Evidence.

Evidence insufficient to support issuance of a certificate of need. Statewide Health Coordinating Council v. General

Hosps., 280 Ark. 443, 660 S.W.2d 906 (1983), cert. denied, 467 U.S. 1205, 104 S. Ct. 2386, 81 L. Ed. 2d 344 (1984) (decision under prior law).

Evidence sufficient to support grant of permit. Beverly Enterprises-Arkansas, Inc. v. Arkansas Health Servs. Comm'n, 308 Ark. 221, 824 S.W.2d 363 (1992).

Agency's methodology in calculating occupancy rate and economic feasibility was upheld; consequently, its finding that the proposed project did not meet the requirements of subsection (b) of this section was also upheld. Arkansas Health Servs. Agy. v. Desiderata, Inc., 331 Ark. 144, 958 S.W.2d 7 (1998).

Geographic Region.

The commission's action in limiting its consideration of the criteria of need to within county limits was a reasonable action made in consideration of its policies and procedures; this action was not arbitrary or capricious and was consistent with the legislature's mandate. Beverly Enterprises-Arkansas, Inc. v. Arkansas Health Servs. Comm'n, 308 Ark. 221, 824 S.W.2d 363 (1992).

Issuance Improper.

Agency was not authorized to issue a certificate of need where none of the exceptional circumstances specified in the laws and regulations were shown. Statewide Health Coordinating Council v. General Hosps., 280 Ark. 443, 660 S.W.2d 906 (1983), cert. denied, 467 U.S. 1205, 104 S. Ct. 2386, 81 L. Ed. 2d 344 (1984) (decision under prior law).

Cited: Arkansas Dep't of Human Servs. v. M.D.M. Corp., 295 Ark. 549, 750 S.W.2d 57 (1988).

20-8-107. Expansion of facilities or services.

(a) Unless otherwise provided in this subchapter, all health facilities seeking to add new beds or home health services or to expand existing bed capacity or home health services shall apply for a permit approving additional beds or services or expanded bed capacity or services pursuant to procedures and criteria promulgated by the Health Services Commission.

(b) The commission may authorize the agency to enjoin construction or expansion of existing facilities of any project commenced in violation of this subchapter through an action filed in the circuit court of the judicial district in which the project is located.

(c) In no event shall the requirements of this subchapter apply to any facility licensed or approved as of March 1, 2003, by the Child Welfare

Agency Review Board pursuant to the Child Welfare Agency Licensing Act, § 9-28-401 et seq., and as specifically exempted by § 9-28-407(a)(3).

(d) Beginning July 1, 2005, the Health Services Permit Agency may not accept applications or requests for permits of approval to add new beds or to expand existing bed capacity of residential care facilities.

History. Acts 1987, No. 593, § 7; 1987 (1st Ex. Sess.), No. 40, § 7; 2003, No. 1285, § 2; 2005, No. 1669, § 2.

Amendments. The 2003 amendment added (c).

The 2005 amendment added (d).

20-8-108. Fees and fines.

All fees and fines collected under this subchapter shall be deposited into the State General Services Fund Account to be used exclusively for the maintenance and operation of the Health Services Permit Agency.

History. Acts 1987, No. 593, § 8; 1987 (1st Ex. Sess.), No. 40, § 10; 2001, No. 1800, § 12.

Amendments. The 2001 amendment inserted "Permit" following "Health Services."

20-8-109. Approval of new projects — Repeal of Acts 1975, No. 558, § 5 — Transfer of duties.

(a) All projects requiring approval under the Certificate of Need Program as established by Acts 1975, No. 558, § 5 [repealed], except free-standing radiation therapy centers, shall not be instituted or commenced after April 4, 1987, except upon application for and receipt of approval from the Health Services Permit Agency utilizing the same criteria and procedures in existence prior to April 4, 1987.

(b) As used in this section, "commence construction" means the approval of project financing or the actual movement onto the site of building materials and equipment by the principal contractor.

(c) Two hundred ten (210) days after April 4, 1987, Acts 1975, No. 558, § 5, as amended, is repealed. On and after the two hundred eleventh day following April 4, 1987, all projects requiring approval under § 20-8-107 shall not be instituted or commenced except upon application for and receipt of a permit of approval as set forth in this subchapter, and, during this period of time, all duties and responsibilities of the State Health Planning and Development Agency and the Statewide Health Coordinating Council are transferred to the Health Services Permit Agency established under this subchapter. Any project not requiring approval under this subchapter, even though covered under Acts 1975, No. 558, § 5 [repealed], may be commenced after April 4, 1987.

(d) The agency shall process all applications or certificates of need for intermediate care facilities for the mentally retarded with fifteen (15) or fewer beds which were pending on April 4, 1987, and shall for a period of thirty (30) days after April 4, 1987, accept additional applications for such facilities. The applications shall be processed utilizing the criteria and procedures in existence prior to April 4, 1987, and in addition the

agency shall consider as a primary factor the experience of each applicant in serving the developmentally disabled population.

History. Acts 1987, No. 593, § 9; 1987 (1st Ex. Sess.), No. 40, § 11; 2001, No. 1800, § 13.

A.C.R.C. Notes. Acts 1987, No. 593, § 9, provided, in part, that all projects, except free-standing radiation therapy centers, which have obtained a certificate of need prior to April 4, 1987, must commence construction prior to the 211th day following April 4, 1987, or the certificate of need shall be considered null and void.

Acts 1989, No. 380, §§ 1 and 2, provided: "Any nonprofit corporation that on January 1, 1989 holds a certification of need or permit, as provided for in Arkansas Code Title 20, Chapter 8, Subchapter 1, for an intermediate care facility for the mentally retarded with fifteen (15) or fewer beds may transfer the certificate of need or permit to an affiliated nonprofit corporation if the transfer is made before January 1, 1990, and if the current holder of the certificate of need or permit con-

tracts to oversee the construction of the facility and is responsible for ensuring the operation of the facility for at least one year. Any transfer of a certificate of need or permit pursuant to this section shall be made without consideration.

"Any certificate of need or permit under Arkansas Code Title 20, Chapter 8, Subchapter 1, for an intermediate care facility for the mentally retarded with fifteen (15) or fewer beds shall continue to be effective, and the project shall not be subject to the time limitation for commencing construction under Arkansas Code § 20-8-109(c). The project shall be instituted or commenced on or before six (6) months after the date the initial regulations of the Department of Human Services for licensure of the facilities become effective."

Amendments. The 2001 amendment inserted "Permit" following "Health Services" in (a) and (c).

20-8-110. Collection and dissemination of health data.

(a) The Health Services Permit Agency shall act as a statewide health data clearinghouse for the acquisition and dissemination of data from health care providers, the state Medicaid program, third-party payors, state agencies, and other appropriate sources in furtherance of this section.

(b) All state agencies having information with regard to health matters shall make available to the agency such health data as is necessary for the Health Services Permit Commission to carry out its responsibilities.

(c) All hospitals, nursing homes, outpatient surgery centers, home health agencies, assisted living facilities, residential care facilities, and hospices licensed by the state shall submit annually a report of utilization statistics as may be required by the agency.

(d) The Insurance Commissioner shall require all third-party payors, including, but not limited to, licensed insurers, medical and hospital service corporations, health maintenance organizations, and self-funded employee health plans, to provide the commission with claims data for health matters.

(e) State agencies which survey hospitals, home health agencies, outpatient surgery centers, or nursing homes for licensure or certification shall annually report to the agency on the surveys of the various facilities. The annual report shall list facilities by name with patient care citations and numbers of serious patient injuries per year by facility.

(f) The Director of the Health Services Agency shall be empowered to release data collected pursuant to this section, subject to the following limitations:

(1) Data released shall not include any information which could be used to identify any individual patient; and

(2) Data released shall not include any information which could be used to associate any of the data with any specific third-party payor.

(g) The director shall prescribe such rules and regulations as may be necessary to carry out the purpose of this section.

(h)(1) With the advice of the commission, the director shall compile and publish summaries of health data collected by the agency.

(2)(A) The director shall prepare an annual report of the agency's findings and submit the report to the Governor, the General Assembly, and the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor or appropriate subcommittees thereof.

(B) The agency shall provide assistance to the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor in the development of information necessary in the examination of health care issues.

(i)(1) The agency may impose a fine on nursing homes, home health agencies, assisted living facilities, residential care facilities, and hospices for failure to timely submit reports of statistics as required by the agency.

(2) The agency may impose a fine of:

(A) Up to one hundred dollars (\$100) for a report more than thirty (30) days late;

(B) Two hundred fifty dollars (\$250) for a report more than sixty (60) days late; and

(C) Five hundred dollars (\$500) for a report more than ninety (90) days late.

History. Acts 1989, No. 107, §§ 1-4; 1997, No. 179, § 23; 2001, No. 1800, § 14; 2005, No. 1271, §§ 1, 2.

Amendments. The 2001 amendment inserted "Permit" following "Health Services" in (a) and (b); and substituted "state" for "State" in (a).

The 2005 amendment substituted "home health agencies, assisted living facilities, residential care facilities, and hospices" for "and home health agencies" in (c); and added (i).

20-8-111. Transfer of Developmental Disabilities Planning Council attributes to other agency.

The Governor may at any time transfer all personnel, appropriations, fund balances, and authorized positions, and the powers, duties, and personnel of the Developmental Disabilities Planning Council to any other designated agency of the state which meets the requirements of Pub. L. No. 101-496 [repealed].

History. Acts 1993, No. 821, § 6.

A.C.R.C. Notes. References to “this subchapter” in §§ 20-8-101 — 20-8-110 may not apply to this section, which was enacted subsequently.

This section may be superseded by § 20-8-112.

Acts 2003, No. 929, § 7, provided: “TRANSFER AUTHORITY - DEVELOPMENTAL DISABILITIES PLANNING COUNCIL. The Governor may at any time transfer all personnel, appropriations, fund balances and authorized positions; and the powers, duties, and personnel of the Developmental Disabilities Planning Council to any other designated agency of the state which meets the requirements of Public Law 104-183. The provisions of this section shall be in effect only from July 1, 2003 through June 30, 2005.”

Acts 2005, No. 1392, § 5, provided: “TRANSFER AUTHORITY — DEVEL-

OPMENTAL DISABILITIES COUNCIL. The Governor may at any time transfer all personnel, appropriations, fund balances and authorized positions; and the powers, duties, and personnel of the Developmental Disabilities Council to any other designated agency of the state which meets the requirements of the Developmental Disabilities Assistance and Bill of Rights Act as amended. The provisions of this section shall be in effect only from July 1, 2005 through June 30, 2007.”

Publisher’s Notes. As to repeal of former § 20-8-111, see Publisher’s Notes at the beginning of this chapter.

U.S. Code. Public Law 101-496, referred to in this section and codified as 42 U.S.C. § 6000 et seq., was repealed by Public Law 106-402 on October 30, 2000. For similar provisions, see 42 U.S.C. §§ 15001, 15002.

20-8-112. Additional transfer of Developmental Disabilities Planning Council attributes to other agency.

The Governor may at any time transfer all the powers, duties, personnel, appropriations, fund balances, and authorized positions of the Developmental Disabilities Planning Council to any other designated agency of the state which meets the requirements of Pub. L. No. 103-230.

History. Acts 1995, No. 77, § 6; 1997, No. 58, § 8.

A.C.R.C. Notes. References to “this subchapter” in §§ 20-8-101 — 20-8-111 may not apply to this section which was enacted subsequently.

Acts 2003, No. 929, § 7, provided: “TRANSFER AUTHORITY - DEVELOPMENTAL DISABILITIES PLANNING COUNCIL. The Governor may at any time transfer all personnel, appropriations, fund balances and authorized positions; and the powers, duties, and personnel of the Developmental Disabilities Planning Council to any other designated agency of the state which meets the requirements of Public Law 104-183. The provisions of this section shall be in effect only from July 1, 2003 through June 30, 2005.”

Acts 2005, No. 1392, § 5, provided:

“TRANSFER AUTHORITY — DEVELOPMENTAL DISABILITIES COUNCIL. The Governor may at any time transfer all personnel, appropriations, fund balances and authorized positions; and the powers, duties, and personnel of the Developmental Disabilities Council to any other designated agency of the state which meets the requirements of the Developmental Disabilities Assistance and Bill of Rights Act as amended. The provisions of this section shall be in effect only from July 1, 2005 through June 30, 2007.”

U.S. Code. Public Law 103-230, referred to in this section and codified as 42 U.S.C. § 6001 et seq., was repealed by Public Law 106-402 on October 30, 2000. For similar provisions, see 42 U.S.C. §§ 15001, 15002.

20-8-113. Findings.

The General Assembly finds and determines that:

(1) The Division of Youth Services of the Department of Health and Human Services is obligated by law to provide appropriate care to juveniles adjudicated delinquent and committed to the division's custody;

(2) The division, pursuant to judicial decrees, assumes custody of delinquent juveniles with little or no notice;

(3) The nature of the criminal conduct engaged in by the juvenile may create the necessity to segregate these juveniles within treatment facilities, thereby denying the division otherwise available beds;

(4) The division must secure sufficient facilities for the care of delinquent juveniles in its custody;

(5) The need for these facilities may vary substantially from the needs anticipated by the Department of Health and Human Services or by the Health Services Permit Commission; and

(6) No permit of approval should be required for facilities or beds contracted for or otherwise provided for delinquent youth committed to the custody of the division or the beds provided for delinquent youth counted against the authorized beds otherwise provided by a facility or organization with a permit of approval.

History. Acts 2001, No. 1583, § 1.

A.C.R.C. Notes. References to "this subchapter" in §§ 20-8-101 through 20-8-

110 may not apply to this section which was enacted subsequently.

20-8-114. [Repealed.]

Publisher's Notes. As to the repeal of this section, see Publisher's Notes at beginning of this subchapter.

SUBCHAPTER 2 — ARKANSAS SPINAL CORD COMMISSION

SECTION.

20-8-201. Legislative intent.

20-8-202. Creation — Members.

20-8-203. Powers and duties.

SECTION.

20-8-204. [Repealed.]

20-8-205. [Repealed.]

20-8-206. Central registry.

A.C.R.C. Notes. Acts 1991, No. 251, § 6, provided: "Of the funds appropriated for Long Term Attendant Care in Section 2 herein, at least seventy-five thousand dollars (\$75,000) per fiscal year shall be used for long term attendant care; provided that said care shall be provided only to persons who have been residents of the State of Arkansas for at least five (5) years, and provided that they sustained the injury, which requires said care, while a resident of this State.

"The State Spinal Cord Commission shall, before the beginning of each fiscal

year, seek a prior review by the Arkansas Legislative Council pertaining to the rules, regulations, and proposed expenditures for operation and administration of the aforementioned long term attendant care services.

"In the event, however, that the State Spinal Cord Commission receives funds to be expended for long term attendant care from sources outside of State funds, the amount of funds originating from outside sources may substitute dollar-for-dollar for the State funds. Provided, however, that the total of all outside funds and the

State funds, in the aggregate, equal at least \$75,000 to be expended for long term attendant care during each fiscal year.”

Acts 1995, No. 97, § 6, provided: “Of the funds appropriated for Long Term Attendant Care in Section 2 herein, at least seventy-five thousand dollars (\$75,000) per fiscal year shall be used for long term attendant care; provided that said care shall be provided only to persons who have been residents of the State of Arkansas for at least five (5) years, and provided that they sustained the injury, which requires said care, while a resident of this State.

“The State Spinal Cord Commission shall, before the beginning of each fiscal year, seek a prior review by the Arkansas Legislative Council pertaining to the rules, regulations, and proposed expenditures for operation and administration of the aforementioned long term attendant care services.

“In the event, however, that the State Spinal Cord Commission receives funds to be expended for long term attendant care from sources outside of State funds, the amount of funds originating from outside sources may substitute dollar-for-dollar for the State funds. Provided, however, that the total of all outside funds and the State funds, in the aggregate, equal at least \$75,000 to be expended for long term attendant care during each fiscal year.”

Effective Dates. Acts 1975, No. 311, § 9: Mar. 4, 1975. Emergency clause provided: “It is hereby found and determined by the General Assembly that legislative findings and purposes set forth in Section 1 of this Act document the immediate need for the establishment of an adequate program to assist in the treatment and rehabilitation of persons suffering from congenital and acquired spinal cord dysfunctions, and that the immediate passage of this Act is necessary to enable the Governor to establish a State Spinal Cord Commission to immediately commence the development, implementation, and operation of a spinal cord treatment pro-

gram in this State for deserving and qualified citizens of this State. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after the date of its passage and approval.”

Acts 1977, No. 428, § 2: passed over Governor’s veto, Mar. 15, 1977. Emergency clause provided: “It is hereby found and determined by the General Assembly that the State Spinal Cord Commission performs vital services benefiting spinal cord injured victims in this State; that the immediate reorganization of the said Commission is necessary to provide for a more efficient Commission, and that the immediate passage of this Act is necessary to accomplish such purpose. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

20-8-201. Legislative intent.

(a) It is declared and found that a major problem facing medicine and the public health and welfare is the absence of an adequate program to

assist in the treatment and rehabilitation of persons suffering from congenital or acquired spinal cord dysfunction.

(b)(1) It has been found that no fewer than one thousand one hundred (1,100) Arkansas residents presently suffer from spinal cord injury or damage, and it is estimated that at least one hundred twenty (120) Arkansans experience serious injury or congenital dysfunction of the spinal cord annually.

(2) Furthermore, it has been found that a fully coordinated approach to the early recognition, the emergency care and transportation, the definitive treatment and rehabilitation, and the long-term management direction and support of such persons is presently lacking and yet is essential to guaranteeing these patients the best possible opportunity to minimize mortality, morbidity, and permanent disability.

(3) It is further recognized that the enormous cost for medical services, hospitalization, and rehabilitative care of spinal cord injured persons makes it extremely difficult, and often financially impossible, for persons of moderate or modest means to secure adequate medical and rehabilitative services, and in most cases, services are financially possible only by the very wealthy, if at all.

(4) Therefore, to guarantee the best possible opportunity for minimizing the mortality, morbidity, and permanent disability of persons due to spinal cord injury or dysfunction, it is essential that the state develop a program to:

(A) Provide for complete identification and visible integration of the numerous complex funding mechanisms which are applicable to the needs of a particular individual at each overlapping stage of treatment and rehabilitation and provide financial assistance when necessary to fill a specific identified gap in funding a portion of the coordinated treatment and rehabilitation plan of a specified patient when the patient's own financial resources are insufficient to meet such requirements;

(B) Authorize the development and operation of an Arkansas spinal cord treatment center and system which will integrate present treatment and rehabilitative capabilities and develop additional service capabilities as necessary to guarantee the availability of continuously current and evolving new processes in state-of-the-art treatment and rehabilitative services to all spinal cord disabled Arkansans; and

(C) Provide for full coordination of treatment and rehabilitation efforts from problem recognition through progressive rehabilitation and for as long as a need for these specialized services shall exist.

History. Acts 1975, No. 311, § 1;
A.S.A. 1947, § 82-3301.

20-8-202. Creation — Members.

(a) There is established the Arkansas Spinal Cord Commission, to consist of five (5) members to be appointed by the Governor from the

state at large for terms of ten (10) years and confirmed by the Senate, as provided by law. The members of the commission shall be either spinal cord injured victims themselves, members of the immediate families of spinal cord injured victims, or persons with special knowledge of and experience with spinal cord injuries and dysfunctions who have demonstrated active involvement and interest in the fight against death and disability due to spinal cord injury and dysfunction.

(b) Members of the commission shall serve until their successors are appointed and confirmed.

(c) If a vacancy occurs on the commission due to death, resignation, or other cause, the vacancy shall be filled by appointment of the Governor of a person eligible for the initial appointment as set forth in this section, to serve for the remainder of the unexpired portion of the term of the member.

(d)(1) The commission shall select a disbursing officer of funds appropriated to the commission. All expenditures shall be approved by the chair of the commission prior to their disbursement.

(2) The commission shall annually elect one (1) of its members as chair and one (1) of its members as vice chair, and other officers as the commission deems necessary.

(e) Members of the commission shall serve without pay but shall be reimbursed from commission funds, if available, for reasonable and necessary expenses incurred in attending to commission business, in the same manner and in accordance with the same conditions, restrictions, and limitations as are applicable to employees of the state.

(f) Members of the commission shall qualify by taking the oath of office as prescribed by law.

(g) The commission shall meet at least one (1) time each calendar quarter and at such other times as may be designated by the commission's rules, or upon call by the chair or by the written request of any four (4) members.

(h)(1) From time to time, the commission may create advisory committees as are deemed necessary to assist the commission in formulating policies, effectuating and reviewing operating procedures, and for such other purposes as the commission may deem appropriate.

(2) The members of the advisory committees shall serve without pay, but the commission may reimburse members of the advisory committees for expenses in accordance with § 25-16-901 et seq. if sufficient funds are available.

History. Acts 1975, No. 311, §§ 2, 3; 3302, 82-3303; Acts 1987, No. 263, §§ 1, 2; 1977, No. 428, § 1; A.S.A. 1947, §§ 82- 1993, No. 1154, § 1; 1997, No. 250, § 180.

20-8-203. Powers and duties.

The Arkansas Spinal Cord Commission shall have the following functions, powers, and duties:

(1) To identify and cooperate with existing agencies, organizations, and individuals offering services to the spinal cord injured or spina

bifida patient for the establishment and integration of a statewide system of treatment, rehabilitation, counseling, and social services by means of entering into cooperative agreement with the agencies, organizations, and individuals. The programs shall be designed and administered to:

(A) Provide for coordinated and integrated development and continued review of a full treatment and rehabilitation plan for each qualified applicant patient;

(B) Identify all possible and existing funding sources for each type of service identified in the treatment plan for which a qualified patient may be eligible and assist the patient in obtaining funding assistance for which he or she is eligible from existing sources;

(C) Assess the patient's financial ability to pay for needed services identified in the treatment plan for which no other funding sources are available;

(D) Provide financial assistance for persons unable to pay for the services, including special equipment, without causing unjust and unusual hardship, including, but not limited to, a drastic lowering of the standard of living to the person or his or her immediate family;

(E) Identify service needs which cannot be adequately met by existing resources;

(F) Provide for increased accountability by documenting the full range of fiscal resources being invested from the various funding sources toward the achievement of each patient's service plan objectives; and

(G) Provide an annual report to the Governor, to the General Assembly, and to the public documenting areas of success, unresolved problems, and overall cost/benefit analyses of expenditures from the various sources;

(2)(A) To develop or cause to be developed an Arkansas spinal cord treatment center and system to serve the entire state through the provision of such direct and indirect services as may be identified and documented as provided in subdivision (1) of this section.

(B) The center and system may provide such services as:

(i) Specialized emergency and acute care;

(ii) Specialized emergency transfer services;

(iii) Specialized diagnostic and prescriptive services;

(iv) Specialized rehabilitative services;

(v) Family education and home care outreach services;

(vi) Coordinative services;

(vii) Continuing educational services for physicians and other health professionals and paraprofessionals who deal with the spinal cord patient; and

(viii) Other services deemed necessary and appropriate by the commission.

(C) At such time as an Arkansas spinal cord treatment center is established, the commission shall serve as its board of directors and may either directly administer the operation of the center or may

enter into contractual agreements with existing institutions for facilities, staffing, and administrative services or such other services as the commission deems appropriate.

(D) Until an Arkansas spinal cord treatment center is established, or after a center is established, the commission may contract and pay for services provided by other institutions whenever the commission determines it to be in the best interest of a spinal cord injured person. It is the intent of this subchapter that the commission have broad discretion in providing or obtaining for spinal cord injured patients a complete level of services which the commission deems to be in the best interest of the patient, as set forth in this subchapter;

(3) To work with all appropriate agencies, organizations, and individuals throughout the state to develop a fully integrated statewide network of coordinated services for spinal cord patients covering all needed services from the detection of spinal cord injuries or congenital conditions through the related phases of emergency care and transfer, acute and definitive care, and rehabilitative and follow-up care and to thus effect a measured reduction in spinal cord-related morbidity and mortality, long-term disability, and long-term maintenance system expenditures of public funds;

(4) To provide special expert consultation and services to cooperating and participating agencies, institutions, and individuals, including appropriate elements of the Arkansas Emergency Medical Services System, on the emergency care and transportation of spinal cord injured persons as well as to other agencies, institutions, and individuals responsible for the delivery of professional medical and health sciences education and training necessary for providing appropriate progressive and evolving specialized programs of treatment of service to spinal cord injured and spina bifida patients;

(5) To develop standards for determining eligibility for assistance to defray the cost of care and treatment of spinal cord patients under this program; and

(6) To accept gifts, grants, and donations from private sources, from municipal and county governments, from the state, and from the federal government to be used for the purposes of this subchapter to defray costs incurred by persons suffering from spinal cord disability who are unable to meet the total cost of treatment and rehabilitation and to promote the development of specialized service capability found to be needed but not available.

History. Acts 1975, No. 311, § 4;
A.S.A. 1947, § 82-3304.

20-8-204. [Repealed.]

Publisher's Notes. This section, concerning the Fiscal Resource Advisory Committee, was repealed by Acts 1999,

No. 1133, § 2. The section was derived from Acts 1975, No. 311, § 5; A.S.A. 1947, § 82-3305.

20-8-205. [Repealed.]

Publisher's Notes. This section, concerning disbursement of funds, was repealed by Acts 1987, No. 263, § 3. The section was derived from Acts 1975, No. 311, § 6; A.S.A. 1947, § 82-3306.

20-8-206. Central registry.

(a)(1) The Arkansas Spinal Cord Commission shall establish and maintain a central registry of spinal cord disabled persons. Every public and private health and social agency and attending physician shall report to the commission within five (5) calendar days after identification of any spinal cord disabled person. However, the consent of the individual shall be obtained prior to making this report, except that every spinal cord disease or injury resulting in permanent partial, permanent total, or total disability shall be reported to the commission immediately upon identification.

(2) The report shall contain the name, age, residence, and type of disability of the individual and such additional information as may be deemed necessary by the commission.

(b)(1) Within fifteen (15) days of the report and identification of a spinal cord disabled person, the commission shall notify the spinal cord disabled person or the most immediate family members of their right to assistance from the state, the services available, and the eligibility requirements.

(2) The commission shall refer severely disabled persons to appropriate divisions, departments, and other state agencies to assure that maximum available rehabilitative services, if desired, are obtained by the spinal cord disabled person.

(3) All other agencies of the state shall cooperate with the commission to ensure that appropriate total rehabilitative and other services are available, as well as access to records and other information.

(c) As used in this section, "spinal cord disabled" means any person who has a spinal cord disease or injury, congenital or acquired, which results in partial or total loss of motor or sensory functions and which results in temporary or permanent partial or total disability.

(d) It is the intent of the General Assembly to ensure the referral of all spinal cord disabled persons to the commission by appropriate individuals or public and private agencies in order that all spinal cord disabled persons might obtain the appropriate total rehabilitative services rendered by existing state agencies, state departments, and other organizations and individuals.

History. Acts 1977, No. 170, §§ 1-4; 1977, No. 330, §§ 1-4; A.S.A. 1947, §§ 82-3307 — 82-3310; Acts 1993, No. 1154, § 2.

SUBCHAPTER 3 — GREAT STRIDES GRANT PROGRAM

SECTION.

20-8-301. Findings.

20-8-302. Use of funds — Regulations.

Publisher's Notes. Former Subchapter 3 was repealed by Acts 1991, No. 343, § 8. The subchapter was derived from the following sources:

20-8-301. Acts 1979, No. 246, § 1; 1979, No. 679, § 1; A.S.A. 1947, § 82-4101.

20-8-302. Acts 1979, No. 246, §§ 2, 3; 1979, No. 679, §§ 2, 3; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; A.S.A. 1947, §§ 6-623 — 6-626, 82-4102, 82-4103.

20-8-303. Acts 1979, No. 246, §§ 4, 6; 1979, No. 679, §§ 4, 6; A.S.A. 1947, §§ 82-4104, 82-4106.

20-8-304. Acts 1979, No. 246, § 5; 1979, No. 679, § 5; A.S.A. 1947, § 82-4105.

20-8-305. Acts 1979, No. 246, § 6; 1979, No. 679, § 6; A.S.A. 1947, § 82-4106.

Acts 1991, No. 343, § 8, provided: "The Home Health Coordinating Council created under Arkansas Code § 20-8-302 is abolished."

20-8-301. Findings.

The General Assembly finds:

(1) That Arkansas consistently ranks among the most unhealthy states in the nation;

(2) That after just one (1) year of regular walking exercise, previously sedentary smokers refrained from smoking at two (2) times the rate of those who received only health education;

(3) That Arkansans who exercise regularly choose walking as their overwhelmingly preferred form of activity;

(4) That women who walk briskly or exercise vigorously may reduce their chances for heart disease by as much as forty percent (40%);

(5) That more than thirty-five percent (35%) of Arkansans do not exercise, placing Arkansas as the sixth most sedentary state in the nation;

(6) That, while people are inactive in all parts of the state, a greater percentage of the population in rural areas is inactive; and

(7) That a reduction in illnesses related to physical inactivity would save Arkansas millions of dollars each year in reduced health care costs.

History. Acts 2001, No. 1750, § 1.

20-8-302. Use of funds — Regulations.

(a) The Division of Health of the Department of Health and Human Services shall use funds from the Tobacco Settlement Proceeds Act, § 19-12-101 et seq., to establish the Great Strides Grant Program.

(b)(1) The division shall promulgate regulations to create a grant program which will allow local communities to participate in the Great Strides Grant Program.

(2) The division shall give priority in meeting the goals of this subchapter to grant proposals from rural communities.

History. Acts 2001, No. 1750, § 2.

SUBCHAPTER 4 — HEALTH DATA INITIATIVE

SECTION.

20-8-401. Legislative findings.

20-8-402. Program creation and administration.

SECTION.

20-8-403. Data access.

20-8-404. Rules.

Cross References. Joint Interim Committee on Health Insurance and Prescription Drugs study, § 10-3-2003.

20-8-401. Legislative findings.

The General Assembly finds and determines that there is a lack of Arkansas-specific information and data to guide officials responsible for policy decisions and that making this data readily available to decision makers is essential to the creation of effective health policy for the state.

History. Acts 2003, No. 1035, § 1.

20-8-402. Program creation and administration.

(a)(1) The Director of the Arkansas Center for Health Improvement shall establish and maintain a program to access health data to be known as the “Arkansas Health Data Initiative”.

(2) The initiative shall be administered and maintained within the the Arkansas Center for Health Improvement.

(b) The purpose of the initiative is to serve as an access point for studies concerning state and federal health information and to inform and support Arkansas health policy officials.

(c) Policy development and access to data under the initiative is contingent upon the availability of funding to support projects under the initiative.

History. Acts 2003, No. 1035, § 2.

20-8-403. Data access.

(a) If agreed to by state agencies responsible for maintaining requested data sources, the Arkansas Center for Health Improvement may have access to the agencies’ information and data to facilitate operation of the Arkansas Health Data Initiative.

(b) Data under subsection (a) of this section include:

(1) Public health databases;

(2) Health care utilization data;

- (3) Financial data related to the procurement of health or health care-related services;
- (4) Data supplied as part of mandated reporting requirements to state agencies by entities, including, but not limited to, other state agencies and departments, nonstate entities, external vendors, and other entities as identified by the initiative;
- (5) Data collected and maintained under the State Health Data Clearinghouse Act, § 20-7-301 et seq.; and
- (6) Other data sources supported and maintained with state funds.

History. Acts 2003, No. 1035, § 3.

20-8-404. Rules.

The Department of Information Systems, Department of Finance and Administration, Department of Health and Human Services, State Insurance Department, and all other appropriate departments, agencies, subcontractors, and officers shall promulgate rules to implement this subchapter.

History. Acts 2003, No. 1035, § 4.

Cross References. Department of Finance and Administration, § 25-8-101 et seq.

Department of Health and Human Services, § 25-10-101 et seq.

Department of Information Systems, § 25-4-104.

State Insurance Department, § 23-61-101 et seq.

CHAPTER 9

HEALTH FACILITIES AND SERVICES GENERALLY

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. HEALTH FACILITIES SERVICES.
- 3. HOSPITALS, CLINICS, ETC. — MISCELLANEOUS PROVISIONS.
- 4. FREE-STANDING BIRTHING CENTERS.
- 5. PEER REVIEW COMMITTEES.
- 6. CONSENT TO TREATMENT.
- 7. MEDICARE.
- 8. TRANSPLANTS.
- 9. UTILIZATION REVIEW.
- 10. ACUTE STROKE CARE ACT OF 2005.
- 11. CERVICAL CANCER CARE ACT OF 2005.

A.C.R.C. Notes. References to “this chapter” in subchapter 1, §§ 20-9-201 — 20-9-221 and subchapters 3 and 5-9 may

not apply to § 20-9-222 or subchapter 4 which were enacted subsequently.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

20-9-101. Professional health service personnel — Parity.

Cross References. Medical Corporation Act, § 4-29-301 et seq.

Effective Dates. Acts 1985, No. 772, § 19: July 1, 1985. Emergency clause provided: "It is hereby found and determined by the Seventy-Fifth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1985 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1985 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1985."

Acts 1989, No. 68 (1st Ex. Sess.), § 33: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1989 is essential to the operation of the agency for which the appropriations in this Act are

provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1989 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1989."

Acts 1991, No. 1085, § 35: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1991 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1991 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991."

20-9-101. Professional health service personnel — Parity.

(a) Any additional compensation or allowances which may be made available to professional health service personnel at the University of Arkansas for Medical Sciences campus may also be made available to those in comparable positions in all divisions or offices of the Department of Health and Human Services.

(b) Professional health service personnel shall be limited to all nursing, occupational therapy, and physical therapy classifications.

History. Acts 1991, No. 1085, § 26.
A.C.R.C. Notes. Former § 20-9-101, concerning health professionals parity, is deemed to be superseded by this section. The former section was derived from Acts

1989 (1st Ex. Sess.), No. 68, § 14. A similar provision which was also codified as § 20-9-101, and was previously superseded, was derived from Acts 1985, No. 772, § 1.

SUBCHAPTER 2 — HEALTH FACILITIES SERVICES

- SECTION.
- 20-9-201. Definitions.
 - 20-9-202. Penalties.
 - 20-9-203. Injunction.
 - 20-9-204. Administration by Division of Health Facilities Services.
 - 20-9-205. Powers and duties of the State Board of Health.
 - 20-9-206. Construction program — Survey and planning activities.
 - 20-9-207. Construction program — Federal funds for surveying and planning.
 - 20-9-208. Construction program — State plan.
 - 20-9-209. Construction program — Application for funds.
 - 20-9-210. Construction program — Payment of installments.

- SECTION.
- 20-9-211. Construction program — Federal funds.
 - 20-9-212. Minimum standards for hospitals and other institutions.
 - 20-9-213. License required — Administration by State Board of Health.
 - 20-9-214. Issuance of license — Fees.
 - 20-9-215. License — Denial, suspension, and revocation.
 - 20-9-216. License — Judicial review.
 - 20-9-217. Alterations, additions, and new construction of facilities.
 - 20-9-218. Emergency services facilities.
 - 20-9-219. Inspections of facilities.
 - 20-9-220. Annual report.
 - 20-9-221. Information confidential.
 - 20-9-222. Certification fee.

A.C.R.C. Notes. References to “this subchapter” in §§ 20-9-201 — 20-9-221 may not apply to § 20-9-222 which was enacted subsequently.

Publisher’s Notes. Acts 1961, No. 414, § 1, provided that Acts 1961, No. 414 (§§ 20-9-202 — 20-9-221) could be cited as the “Division of Hospital and Nursing Homes Act.”

Acts 1961, No. 414, § 29, provided, in part, that the specific intent of that act was to vest sole authority to license hospitals and nursing homes in the State Department of Public Health (now Division of Health of the Department of Health and Human Services).

Acts 1961, No. 414, codified in this subchapter, is also codified as §§ 20-10-214 — 20-10-228.

Preambles. Acts 1999, No. 506 contained a preamble which read:

“WHEREAS, the Arkansas Department of Health has been charged with the responsibility for conducting surveys of inpatient hospital facilities to ensure that each complies with the rules and regula-

tions adopted by the Arkansas State Department of Health; and

“WHEREAS, the Joint Commission on Accreditation of Healthcare Organizations performs rigorous surveys in connection with its accreditation process, refusing accreditation to those hospitals which do not meet the Joint Commission on Accreditation of Healthcare Organizations’ standards; and

“WHEREAS, many hospitals choose to engage the Joint Commission on Accreditation of Healthcare Organizations to perform surveys in order to receive accreditation; and

“WHEREAS, the Joint Commission on Accreditation of Healthcare Organization is recognized for the rigor of its surveys, which are performed on a regular schedule; and

“WHEREAS, forty-four (44) states recognize surveys and accreditation by the Joint Commission on Accreditation of Healthcare Organizations as adequate substitutes for state surveys and accordingly deem them to be sufficient to meet survey requirements, and

"WHEREAS, the duplicate surveys are costly to hospitals, leading to costs which are higher than would be necessary if only one (1) survey was required; and

"WHEREAS, it is in the public interest that Arkansas hospitals be surveyed by expert surveyors at the lowest cost for the provision of quality reviews."

Effective Dates. Acts 1965, No. 454, § 5: Mar. 20, 1965. Emergency clause provided: "It is found and declared by the General Assembly of Arkansas that Sections 8 and 22 of Act 414 of 1961 do not meet requirements of the Federal Government to qualify the State to receive Federal moneys to carry out the purposes of Act 414 of 1961, and that there is great need for such Federal funds to be immediately obtained, therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of public peace, health and safety, shall take effect and be in full force from and after its passage and approval."

Acts 1971, No. 258, § 5: became law without Governor's signature, Mar. 9, 1971. Emergency clause provided: "It is found and declared by the General Assembly of Arkansas that Act 414 of 1961, and amendments thereto, does not clearly provide the State Board of Health with the authority to license, inspect and regulate Recuperation Centers, that such intermediate health care facilities are desirable and necessary, and that there is great need for such authority to be clearly and immediately established. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from the date of its passage and approval."

Acts 1975, No. 190, § 4: Feb. 18, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is an urgent need in this State for outpatient surgery centers as defined herein to relieve the severe overcrowding of hospital facilities; that such centers will serve an urgent need of the citizens of this State for additional facilities where minor surgery may be performed without the necessity of entering a hospital and incurring the much higher costs of a hospital, and that this Act should be given effect immediately to permit the establishment and operation of such facilities. Therefore, an emergency is

hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1977, No. 536, § 4: Mar. 18, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is an urgent need in this State for outpatient psychiatric centers as defined herein to relieve the severe overcrowding of hospital facilities; that such centers will serve an urgent need of the citizens of this State for additional facilities where psychiatric services may be provided without the necessity of entering a hospital and incurring the much higher costs of a hospital, and that this Act should be given effect immediately to permit the establishment and operation of such facilities. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 273, § 3: Feb. 25, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the length and variety of billing forms now used by third-party carriers is an important source of administrative expense for hospitals and patients; that hospital cost containment is essential to the health, safety and welfare of the people and should be encouraged; and that a uniform billing form, if implemented without delay, will provide a significant savings in hospital costs in this State. Therefore an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 516, § 3: Apr. 1, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that some hospitals around the State are discontinuing their in-patient services and as a result also are closing their emergency room services; that this Act would allow the continued operation of hospital emergency services even when the in-patient services have been discontinued; that until this Act becomes effective some portions of the State may be without adequate hospital emergency ser-

vices and therefore this Act should go into effect immediately. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the

preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Am. Jur. 40A Am. Jur. 2d, Hospitals,
§ 4.

C.J.S. 41 C.J.S., Hospitals, §§ 2-4, 8.

20-9-201. Definitions.

As used in this subchapter:

(1) "Administrator" means the chief administrative officer in the Division of Health Facilities Services of the Division of Health of the Department of Health and Human Services;

(2)(A) "Alcohol and drug abuse inpatient treatment center" means a facility in which services are provided for the diagnosis, treatment, and rehabilitation of alcohol and drug abuse.

(B) "Alcohol and drug abuse inpatient treatment center" does not include a facility that provides only counseling and room and board;

(3) "Department" means the State Board of Health;

(4) "Division" means the Division of Health Facilities Services of the Division of Health of the Department of Health and Human Services;

(5) "Federal act" means the Hospital Survey and Construction Act, Pub. L. No. 79-725, as amended;

(6)(A) "Hospital" means a public health center, a general, tuberculosis, mental, or chronic disease hospital, or a related facility such as a laboratory, outpatient department, nurses home or training facility, or a central service facility operated in connection with a hospital.

(B) "Hospital" does not include an establishment furnishing primarily domiciliary care;

(7)(A) "Institution" means a place for the diagnosis, treatment, or care of two (2) or more persons, not related to the proprietor, suffering from illness, injury, or deformity, or where obstetrical care or care of the aged, blind, or disabled is rendered over a period exceeding twenty-four (24) hours.

(B) "Institution" also includes an outpatient surgery center, alcohol or drug abuse treatment center, outpatient psychiatric center, and infirmary.

(C) "Institution" does not include any establishment operated by the federal government or by any of its agencies;

(8) "Medical facility" means a diagnostic or diagnostic and treatment center, rehabilitation facility as these terms are defined in the federal act, and any other medical facility for which federal aid may be authorized under federal law;

(9) "Nonprofit hospital" and "nonprofit medical facility" means a hospital or medical facility, owned and operated by one (1) or more

persons or a corporation or association, no part of the net earnings of which inures to the benefit of any shareholder or individual;

(10)(A) "Outpatient surgery center" means a facility in which surgical services, other than minor dental surgery, are offered which require the use of general or intravenous anesthetics and where, in the opinion of the attending physician, hospitalization, as defined in the present licensure law, is not necessary.

(B)(i) "Outpatient psychiatric center" means a facility in which psychiatric services are offered for a period of eight (8) to sixteen (16) hours a day, and where, in the opinion of the attending psychiatrist, hospitalization, as defined in the present licensure law, is not necessary.

(ii) "Outpatient psychiatric center" does not include community mental health clinics and centers, as they now exist;

(11) "Public health center" means a publicly owned facility for the provision of public health services and includes related facilities such as laboratories, clinics, and administrative offices operated in connection with public health centers;

(12)(A) "Recuperation center" means an establishment with permanent facilities which include inpatient beds, with an organized medical staff, and with medical services including physicians' services and continuous nursing services to provide treatment for patients who are not in an acute phase of illness but who currently require primarily convalescent or restorative service which is usually post-acute hospital care of relatively short duration.

(B) "Recuperation center" does not include an establishment furnishing primarily domiciliary care; and

(13) "Surgeon General" means the Surgeon General of the United States Public Health Service.

History. Acts 1961, No. 414, § 2; 1971, No. 258, § 1; 1975, No. 190, §§ 1, 2; 1977, No. 536, §§ 1, 2; 1985, No. 980, §§ 1, 2; A.S.A. 1947, § 82-328; Acts 1987, No. 143, § 1.

U.S. Code. The Hospital Survey and

Construction Act, Public Law 79-725, referred to in this section has, for the most part, been eliminated from the United States Code. For remaining provisions, see 48 U.S.C. § 1666 and 42 U.S.C. § 291.

RESEARCH REFERENCES

UALR L.J. Survey of Arkansas Law, Insurance, 1 UALR L.J. 210.

CASE NOTES

Cited: *Raney v. Raulston*, 238 Ark. 875, 385 S.W.2d 651 (1965).

20-9-202. Penalties.

(a) Any person, partnership, association, or corporation establishing, conducting, managing, or operating any institution without first obtain-

ing a license therefor as provided or violating any provision of this subchapter or regulations lawfully promulgated under this subchapter shall be guilty of a violation.

(b) Upon conviction, the person shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100) for the first offense and not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each subsequent offense.

(c) Each day the institution shall operate after a first conviction shall be considered a subsequent offense.

History. Acts 1961, No. 414, § 27; in (a), substituted “under this subchapter”
A.S.A. 1947, § 82-353; Acts 2005, No. for “hereunder” and “violation” for “misde-
1994, § 104. meanor”; and substituted “fined” for “lia-
ble to a fine of” in (b).

Amendments. The 2005 amendment,

20-9-203. Injunction.

The State Board of Health may sue in the name of the state any person, partnership, association, or corporation in order to enjoin the establishing, conducting, managing, or operating of any institution within the meaning of this subchapter without the person's first having secured a license therefor.

History. Acts 1961, No. 414, § 26;
A.S.A. 1947, § 82-352.

20-9-204. Administration by Division of Health Facilities Services.

(a) There is established in the State Board of Health a Division of Health Facilities Services, which shall be administered by a full-time salaried administrator under the supervision and direction of the Director of the Division of Health of the Department of Health and Human Services.

(b) The Division of Health of the Department of Health and Human Services, through the Division of Health Facilities Services, is the sole agency of the state for the purpose of:

(1) Making an inventory of existing hospitals and medical facilities, surveying the need for construction of hospitals and medical facilities, and developing a program of construction as provided in this subchapter;

(2) Developing and administering a state plan for the construction of public and other nonprofit hospitals and medical facilities as provided; and

(3) Inspecting, regulating, and licensing hospitals and institutions.

History. Acts 1961, No. 414, § 3;
A.S.A. 1947, § 82-329.

CASE NOTES

Regulations.

The Department of Health (now the Division of Health of the Department of Health and Human Services) regulations, promulgated pursuant to this section, which require hospitals to adopt written bylaws setting out the method of appointing the medical staff, the requirements for

medical staff membership, and an appeal process for physicians to follow in challenging adverse recommendations, do not constitute a form of state action which would give rise to a federal civil rights action by a physician disciplined by a private hospital. *Garst v. Stoco, Inc.*, 604 F. Supp. 326 (E.D. Ark. 1985).

20-9-205. Powers and duties of the State Board of Health.

(a) In carrying out this subchapter, the State Board of Health is empowered and directed to:

(1) Require such reports, make such inspections and investigations, and prescribe and enforce such reasonable rules and regulations as it finds necessary to effectuate the purposes of this subchapter;

(2) Provide methods of administration and appoint an administrator and other personnel of the Division of Health Facilities Services;

(3) Procure and pay for the temporary services of experts or consultants on a fee-for-service basis;

(4) Enter into agreements for the utilization of the facilities and services of other departments, agencies, and institutions, public and private;

(5) Accept on behalf of the state, and deposit with the Treasurer of State, any grant, gift, or contribution of funds made to assist in meeting the cost of carrying out the purposes of this subchapter, and expend such funds accordingly;

(6) Make an annual report to the Governor on activities and expenditures made pursuant to this subchapter;

(7) Procure the services of an attorney to assist the department in any legal work involved in carrying out the duties of the department and to pay for the services on a fee-for-service or retainer basis; and

(8) Prescribe and enforce such reasonable rules and regulations as are necessary to adopt a uniform billing form for hospitals within the state and to prescribe penalties for the failure or refusal to utilize and accept such forms. However, the form must be acceptable by Medicare and its intermediaries within the state and consistent with the form adopted at the federal level by Medicare and the National Uniform Billing Committee.

(b) The department shall adopt, promulgate, and enforce such rules, regulations, and standards as may be necessary for the accomplishment of the purposes of this subchapter. The rules, regulations, and standards shall be modified, amended, or rescinded, from time to time, by the department as may be in the public interest.

History. Acts 1961, No. 414, §§ 4, 28; 1983, No. 273, § 1; A.S.A. 1947, §§ 82-330, 82-354.

20-9-206. Construction program — Survey and planning activities.

(a) The State Board of Health is empowered and directed to make an inventory of existing hospitals and medical facilities including public, nonprofit, and proprietary hospitals and medical facilities, to survey the need for construction of hospitals and medical facilities and, on the basis of the inventory and survey, to develop a program for the construction of such public and other nonprofit hospitals and medical facilities as will, in conjunction with existing facilities, afford the necessary physical facilities for furnishing adequate hospital and medical facility services to the people of the state in accordance with the regulations prescribed by the federal act.

(b) The construction program shall provide, in accordance with regulations prescribed by the federal act, for adequate hospital and medical facilities for the people of the state, and insofar as possible shall provide for their distribution throughout the state in such manner as to make all types of hospital and medical facility services reasonably accessible to all persons in the state.

History. Acts 1961, No. 414, §§ 9, 10;
A.S.A. 1947, §§ 82-335, 82-336.

CASE NOTES

Cited: Raney v. Raulston, 238 Ark. 875,
385 S.W.2d 651 (1965).

20-9-207. Construction program — Federal funds for surveying and planning.

(a) The State Board of Health may make application to the Surgeon General for, and to receive, federal funds to assist in carrying out the survey and planning activities provided in §§ 20-9-206(a) and 20-10-217(a).

(b) The funds shall be deposited with the Treasurer of State as a trust fund designated the "Hospital and Medical Facility Survey and Planning Fund", which shall be kept separate and apart from all public funds of the state and shall be available to the department for expenditure in carrying out the survey and planning activities provided.

(c) Any funds received and not expended for such purposes shall be repaid to the Treasury of the United States.

(d) Warrants for all payments from the fund shall bear the signature of the Director of the Division of Health of the Department of Health and Human Services or his or her agent.

History. Acts 1961, No. 414, § 11;
A.S.A. 1947, § 82-337.

20-9-208. Construction program — State plan.

(a)(1) The State Board of Health shall prepare and submit to the Surgeon General a state plan which shall include the hospital and medical facilities construction program developed as provided in this subchapter. The plan shall provide for the establishment, administration, and operation of hospital and medical facilities construction activities in accordance with the requirements of the federal act and regulations thereunder.

(2) The state plan shall also set forth the relative need for the several projects included in the construction program determined in accordance with regulations prescribed by the federal act and provide for the construction, insofar as financial resources available for construction and for maintenance and operation permit, in the order of relative need.

(b) Prior to the submission of the plan to the Surgeon General, the department shall give adequate publicity to a general description of all the provisions proposed to be included therein and hold a public hearing at which all persons or organizations with a legitimate interest in the plan may be given an opportunity to express their views.

(c) After approval of the plan by the Surgeon General, the department shall cause to be published a general description of the provisions thereof in at least one (1) newspaper having general circulation in each county in the state and shall make the plan, or a copy thereof, available upon request to all interested persons or organizations.

(d) The department shall from time to time review the construction program, submit to the Surgeon General any modifications of the program which it may find necessary, and may submit to the Surgeon General modifications of the state plan not inconsistent with the requirements of the federal act.

History. Acts 1961, No. 414, §§ 12, 14;
A.S.A. 1947, §§ 82-338, 82-340.

20-9-209. Construction program — Application for funds.

(a) Applications for hospital and medical facilities construction projects for which federal funds are requested shall be submitted to the State Board of Health and may be submitted by the state or any political subdivision thereof or by any public or other nonprofit agency authorized to construct and operate a hospital or a medical facility.

(b) However, no application for a diagnostic or treatment center shall be approved unless the applicant is:

(1) The state, a political subdivision, or a public agency; or

(2) A person, corporation, or association which owns and operates a nonprofit hospital.

(c) Each application for a construction project shall conform to federal and state requirements.

(d) If after affording reasonable opportunity for development and presentation of applications in the order of relative need the department finds that a project application complies with subsection (a) of this

section and is otherwise in conformity with the state plan, then it shall approve the application and shall recommend and forward it to the Surgeon General.

(e) The department by regulation shall provide an opportunity for fair hearing and appeal to every applicant who is dissatisfied with any action regarding an application.

History. Acts 1961, No. 414, §§ 15, 16;
A.S.A. 1947, §§ 82-341, 82-342.

20-9-210. Construction program — Payment of installments.

The State Board of Health shall from time to time cause to be inspected each construction project approved by the Surgeon General. If the inspection warrants, the department shall certify to the Surgeon General that work has been performed upon the project or purchases have been made in accordance with the approved plans and specifications and that payment of an installment of federal funds is due to the applicant.

History. Acts 1961, No. 414, § 17;
A.S.A. 1947, § 82-343.

20-9-211. Construction program — Federal funds.

(a) The State Board of Health is empowered to receive federal funds in behalf of, and transmit them to, such applicants.

(b) Money received from the federal government for a construction project shall be deposited with the Treasurer of State as a trust fund designated the "Hospital and Medical Facilities Construction Fund". The fund shall be separate from all public funds of the state and shall be used solely for payments due to applicants for work performed or purchases made in carrying out approved projects.

(c) Warrants for all payments from the fund shall bear the signature of the Director of the Division of Health of the Department of Health and Human Services or his or her agent.

(d) The procedure provided in this section for the receipt and disbursement of such funds is not intended to deprive any applicant from receiving federal payments directly if, for any reason, the department or the Treasurer of State is not authorized to receive and transmit federal payments for certain construction projects to certain applicants.

History. Acts 1961, No. 414, § 18; Medical Facilities Construction Fund, referred to in this section, no longer exists.
A.S.A. 1947, § 82-344.

Publisher's Notes. The Hospital and See title 19, chapters 5 and 6 of this code.

20-9-212. Minimum standards for hospitals and other institutions.

(a) The State Board of Health shall require hospitals and other institutions which receive federal aid for construction under the state

plan to comply with such minimum standards prescribed by the department as may be promulgated in accordance with the federal act and federal rules and regulations.

(b) A hospital or institution, or the governing body thereof, shall comply with such minimum standards as may be prescribed by the department under the authority of this section even though federal aid may not be sought or received under this subchapter.

History. Acts 1961, No. 414, § 13;
A.S.A. 1947, § 82-339.

20-9-213. License required — Administration by State Board of Health.

(a) No hospital, recuperation center, or related institution shall be established, conducted, or maintained in this state without obtaining a license.

(b) The State Board of Health may provide, by properly promulgating rules and regulations, for the issuance of a recuperation center license.

(c) The department may provide, by properly promulgating rules and regulations, for the issuance of permanent type licenses, subject to revocation.

History. Acts 1961, No. 414, § 19;
1965, No. 434, § 1; 1971, No. 258, § 2;
A.S.A. 1947, § 82-345.

CASE NOTES

Breach of Contract Action.

Submission of the defective design for medical facility on November 27, 1987, and its rejection by the Health Department on December 4, 1987, constituted a material breach of contract since without

approve plans the facility would not be licensed and, without licensure the ambulatory surgery center could not operate. *Zufari v. Architecture Plus*, 323 Ark. 411, 914 S.W.2d 756 (1996).

20-9-214. Issuance of license — Fees.

(a) The State Board of Health shall issue licenses for the operation of institutions, subject to this subchapter, when the institutions are found to comply with the provisions of this subchapter and such regulations as are lawfully promulgated by the department.

(b) The Division of Health of the Department of Health and Human Services may levy and collect the following annual fees for issuance of an annual license to hospitals or institutions:

Per facility (unless otherwise noted)	FY '98	FY '99
(1) Hospitals (per bed)	\$4.00	\$6.00
(2) Ambulatory Surgery Center	1,000.00	1,000.00
(3) Hospital-Based Recuperation Center	160.00	275.00
(4) Freestanding Recuperation Center	2,000.00	2,000.00
(5) Hospital-Based Alcohol/Drug Unit	60.00	75.00
(6) Freestanding Alcohol/Drug Unit	1,000.00	1,000.00
(7) Hospital-Based Outpatient Psychiatric Center	60.00	75.00
(8) Freestanding Outpatient Psychiatric Center	1,000.00	1,000.00
(9) Infirmary	100.00	100.00
(10) Reissuance of license due to name/address change	100.00	100.00

(c)(1) Applicants for license shall file applications under oath with the department upon forms prescribed by the department and shall pay an annual license fee as set forth in subsection (b) of this section, which shall be paid into the State Treasury or refunded to the applicant if a license is denied.

(2)(A) The application shall be signed by the owner, if an individual or partnership, in the case of a corporation by two (2) of its officers, or in the case of a governmental unit by the head of the governmental department having jurisdiction over it.

(B) Applications shall set forth the full name and address of the institution for which the license is sought and such additional information as the department may require, including affirmative evidence of ability to comply with such reasonable standards, rules, and regulations as may be lawfully prescribed in this subchapter.

(3) Applications for annual license renewal shall be postmarked no later than January 2 of the succeeding calendar year. License applications for existing institutions received after January 2 shall be subject to a penalty of one dollar (\$1.00) per day for each day after January 2.

(d)(1) Licenses issued under this section shall be effective on a calendar-year basis and shall expire on December 31 of each calendar year.

(2) A license shall be issued only for the premises and persons in the application and shall not be transferable.

(3) Licenses shall be posted in a conspicuous place on the licensed premises.

(e) All fees levied and collected under this chapter are special revenues and shall be deposited into the State Treasury, there to be credited to the Public Health Fund.

(f) Subject to such rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the Division of Health of the Department of Health and Human Services may transfer all unexpended funds relative to the health facility services that pertain to fees collected, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

History. Acts 1961, No. 414, § 22; 1965, No. 454, § 2; A.S.A. 1947, § 82-348; Acts 1987, No. 143, §§ 2, 4; 1997, No. 574, § 1.

Cross References. Health Facility Services Revolving Fund, § 19-5-1089.

20-9-215. License — Denial, suspension, and revocation.

(a) The State Board of Health is empowered to deny, suspend, or revoke licenses on any of the following grounds:

(1) Violation of any of the provisions of this subchapter or the rules and regulations lawfully promulgated under this subchapter;

(2) Permitting, aiding, or abetting the commission of any unlawful act in connection with the operation of the institutions.

(b)(1) If the department determines to deny, suspend, or revoke a license, it shall send to the applicant or licensee, by certified mail, a notice setting forth the particular reasons for the determination.

(2) The denial, suspension, or revocation shall become final thirty (30) days after the mailing of the notice unless the applicant or licensee gives written notice within the thirty-day period of a desire for hearing.

(c) Thereupon, the applicant or licensee shall be given a fair hearing and shall have the right to present such evidence as may be proper.

(d)(1) On the basis of the evidence at the hearing, the determination involved shall be affirmed or set aside. A copy of the decision, setting forth the finding of facts and the particular grounds upon which it is based, shall be sent by certified mail to the applicant or licensee.

(2) The decision shall become final fifteen (15) days after it is mailed unless the applicant or licensee, within the fifteen-day period, appeals the decision to the court under § 20-9-216.

(e) A full and complete record of all proceedings shall be kept and all testimony shall be reported, but it need not be transcribed unless the decision is appealed pursuant to § 20-9-216 or a transcript is requested by an interested party who shall pay the cost of preparing the transcript.

(f) Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by regulations.

(g) The procedure governing hearings authorized by this section shall be in accordance with regulations promulgated by the department.

History. Acts 1961, No. 414, § 22; 1965, No. 454, § 2; A.S.A. 1947, § 82-348.

20-9-216. License — Judicial review.

(a) Any applicant or licensee who is dissatisfied with the decision of the State Board of Health or other body designated by the department or this subchapter as a result of the hearing provided in § 20-9-215 may appeal to the Pulaski County Circuit Court for judicial review of the decision within fifteen (15) days after receiving notice of the decision.

(b) Thereupon, the department shall promptly certify and file in court the transcript of the hearing on which the decision is based.

(c) Findings of fact by the department shall be conclusive unless contrary to law on the evidence.

(d) If necessary, the court may remand the case to the department to take further evidence, and the department may thereupon make new or modified findings of fact which shall have like weight on review.

(e) The court may affirm, modify, or reverse the decision of the department, and either the applicant or licensee or the department may appeal from the court's decision in the manner provided by law with regard to appeals from the court.

(f) Pending final disposition of the matter, the status quo of the applicant or licensee shall be preserved.

History. Acts 1961, No. 414, § 25;
A.S.A. 1947, § 82-351.

20-9-217. Alterations, additions, and new construction of facilities.

(a) The State Board of Health shall prescribe by regulation that any licensee or applicant desiring to make specified types of alterations or additions to its facilities or to construct new facilities shall, before commencing the alterations, additions, or new construction, submit plans and specifications for them to the department for preliminary inspection and approval or recommendations with respect to compliance with the regulations and standards.

(b) From time to time, the Director of the Division of Health of the Department of Health and Human Services or his or her agent shall inspect each construction project approved by the Surgeon General. If the inspection so warrants, the director or his or her agent shall certify to the Surgeon General that work has been performed upon the project, or purchases have been made, in accordance with the approved plans and specifications, and that payment of an installment of federal funds is due to the applicant.

History. Acts 1961, No. 414, § 21; **Publisher's Notes.** Acts 1987, No. A.S.A. 1947, § 82-347; Acts 1987, No. 143, 143, § 3, is also codified as § 20-10-225.
§ 3.

20-9-218. Emergency services facilities.

(a) The Department of Health is empowered to license under this subchapter and §§ 20-10-213 — 20-10-231 those hospitals which have

discontinued inpatient services to continue to provide emergency services.

(b) The emergency services facilities shall be subject to inspection and to all other provisions of this subchapter and §§ 20-10-213 — 20-10-231 and all regulations promulgated under this subchapter and §§ 20-10-213 — 20-10-231.

(c) Hospital emergency services facilities licensed under this section shall not be required to obtain a certificate of need or any other permit other than that prescribed by this section.

History. Acts 1987, No. 516, § 1.

Publisher's Notes. Former § 20-9-218, concerning certificate of need and licensing of alcohol/drug abuse treatment

centers, was repealed by Acts 1987, No. 593, § 10. The section was derived from Acts 1985, No. 980, § 3; A.S.A. 1947, § 82-345.1.

20-9-219. Inspections of facilities.

(a) As used in this section:

(1) "Department" means the Division of Health of the Department of Health and Human Services and "Division" means the Division of Health Facilities Services of the Division of Health of the Department of Health and Human Services;

(2)(A) "Hospital" means a facility used for the purpose of providing inpatient diagnostic care or treatment, including general medical care, surgical care, obstetrical care, psychiatric care, and specialized services or specialized treatment which is subject to the rules and regulations for hospitals and related institutions in Arkansas.

(B) "Hospital" does not mean a facility primarily for the provision of long-term care;

(3) "Inspection" means the on-site review of the physical plant and practices as governed by the current rules and regulations of hospitals and related institutions;

(4) "Investigation" means a specific inspection by the division related to a complaint or complaints;

(5) "Joint Commission on Accreditation of Healthcare Organizations" means the national accrediting body for hospitals, which performs on-site surveys of compliance with its regulations at regular intervals to ensure that the hospital provides quality care sufficient to justify accreditation; and

(6) "Survey" means the on-site formal review process of a hospital by the Division of Health Facilities Services at regular intervals to ensure compliance with applicable rules and regulations adopted by the Division of Health of the Department of Health and Human Services.

(b) The Division of Health Facilities Services shall make such inspections and surveys as it may prescribe by regulation.

(c) Each hospital accredited by the commission shall be deemed by the Division of Health of the Department of Health and Human Services to be licensable without further survey by the personnel of the Division of Health Facilities Services if:

(1) The hospital holds current, full accreditation; and

(2) The Division of Health Facilities Services receives a copy of the hospital's official accreditation certificate and the complete report issued by the commission within thirty (30) days of receipt by the hospital from the commission or within thirty (30) days of July 30, 1999.

(d) No hospital shall be required to submit accreditation by the commission, but whenever a hospital does not submit a commission accreditation certificate, the personnel of the Division of Health of the Department of Health and Human Services shall conduct such surveys as are prescribed by regulation.

(e) Nothing in this section shall affect the right of an authorized representative of the Division of Health of the Department of Health and Human Services to enter upon or into the premises of a hospital at any time to make an inspection as part of an investigation when the Division of Health of the Department of Health and Human Services does so in response to a complaint or specific identifiable information that the hospital is not meeting minimum quality standards. If the Division of Health Facilities Services upon review of a commission report reasonably determines that a hospital may not be meeting state licensure standards, it may perform a survey of that hospital and take such steps as are necessary to enforce the standards of the Division of Health of the Department of Health and Human Services.

(f) A validation survey may be conducted on five percent (5%) of deemed hospitals during any calendar year to determine continued compliance with state regulations.

(g) The Division of Health of the Department of Health and Human Services shall continue to have authority over new construction, renovations, and alterations of the hospitals as set forth in the current regulations.

(h) All hospitals shall notify the Division of Health Facilities Services within thirty (30) days when there is a change in accreditation status.

(i) A staff member of the Division of Health Facilities Services may accompany the commission team that conducts any hospital accreditation survey as an ex officio member for the purpose of observation.

History. Acts 1961, No. 414, § 21; A.S.A. 1947, § 82-347; Acts 1999, No. 506, § 2.

Publisher's Notes. Acts 1999, No. 506, § 1, provided: "Findings. The General Assembly of the State of Arkansas hereby finds and declares that the citizens of Arkansas are entitled to receive health care in hospitals which have been surveyed on a regular basis to ensure high

quality care, that a hospital must undergo two (2) duplicate surveys when they decide to become accredited by the Joint Commission on Accreditation of Health-care Organizations, and that this duplication is costly and without effect on the quality of hospital care whenever a hospital, after survey, is accredited by the Joint Commission on Accreditation of Health-care Organizations."

20-9-220. Annual report.

The department shall make an annual report of its activities and operations under this subchapter to the Governor and shall make such information available to the General Assembly as may be requested.

History. Acts 1961, No. 414, § 24;
A.S.A. 1947, § 82-350.

20-9-221. Information confidential.

(a) Information received by the department through inspection, or otherwise, authorized under this subchapter, shall not be disclosed publicly in such manner as to identify individuals or institutions except in a proceeding involving the question of licensing or revocation of a license.

(b)(1) However, in the case of a specific written request by the deputy director of the appropriate division as determined by the Director of the Department of Health and Human Services for information concerning a certain nursing home, information obtained during recent inspections of the home may be supplied in writing to the deputy director.

(2) This exception applies only to homes providing care for recipients of public welfare and is not to be construed as permitting the exchange of such information on all homes in the state but is specifically limited to those for which the deputy director of the appropriate division as determined by the director has specific complaints.

(3) These complaints shall be forwarded to the department along with the request for information from the deputy director.

(4) Information received by the deputy director in the manner prescribed by this section shall not be disclosed.

History. Acts 1961, No. 414, § 23;
1965, No. 434, § 2; A.S.A. 1947, § 82-349.

RESEARCH REFERENCES

Ark. L. Rev. Watkins, Access to Public Records Under the Arkansas Freedom of Information Act, 37 Ark. L. Rev. 741.

20-9-222. Certification fee.

The Division of Health of the Department of Health and Human Services may levy and collect a fee for the issuance of an annual certification to child health management services clinics. The certification fee for a child health management services clinic shall be an annual fee of one thousand dollars (\$1,000).

History. Acts 1997, No. 574, § 4.
A.C.R.C. Notes. References to "this subchapter" in §§ 20-9-201 — 20-9-221

may not apply to this section which was enacted subsequently.

References to "this chapter" in subchap-

ter 1, §§ 20-9-201 — 20-9-221 and subchapters 3 and 5-9 may not apply to this section which was enacted subsequently.

Cross References. Health Facility Services Revolving Fund, § 19-5-1089.

SUBCHAPTER 3 — HOSPITALS, CLINICS, ETC. — MISCELLANEOUS PROVISIONS

SECTION.

- 20-9-301. Posting of room rates.
- 20-9-302. Abortion clinics, health centers, etc.
- 20-9-303. [Repealed.]
- 20-9-304. Use of records for medical research.
- 20-9-305. Annual reports — Nonprofit hospitals.
- 20-9-306. Annual reports — Public-supported hospitals.

SECTION.

- 20-9-307. Itemized statement for services, drugs, and supplies.
- 20-9-308. Advice by hospital employees to reviewing committees.
- 20-9-309. Definition of Emergency Medical Care Act.
- 20-9-310. No liability for furnishing medical records pursuant to subpoena.
- 20-9-311. Findings.

Cross References. Good Samaritan law, § 17-95-101.

Hospital's duty to report physician misconduct, § 17-95-104.

Reproductive health information, § 20-16-401 et seq.

Effective Dates. Acts 1969, No. 198, § 5: Mar. 7, 1969. Emergency clause provided: "It being immediately necessary for the furtherance of medical research and education and the protection of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this Act shall take effect and be in full force from and after its passage and approval."

Acts 1975 (Extended Sess., 1976), No. 1231, § 3: Feb. 16, 1976. Emergency clause provided: "It is hereby found and determined by the General Assembly that the operation of public supported hospitals which serve the public is of great interest and concern to the citizens of the State; that since the operation and financial condition of such hospitals is of serious concern to the public, it is appropriate that such hospitals be required to publish an annual financial report, and that this Act should be given effect immediately in order to assure the publication of such reports at the earliest possible date. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in

full force and effect from and after its passage and approval."

Acts 1983, No. 509, § 4: Mar. 17, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that there exists in the State facilities which are primarily abortion clinics; that the wilful termination or abortion of the pregnancy of a woman who is known to be pregnant is a hazardous procedure; that under present laws, such abortion clinics are not adequately supervised and regulated; that this Act is designed to provide for such supervision and regulation and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1358, § 8: became law without the Governor's signature. Noted Apr. 17, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that there is an immediate and urgent need to protect the lives, health, and welfare of the people of Arkansas during medical emergencies which require these provisions to be authorized immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be

in full force and effect from and after its passage and approval."

Acts 2001, No. 451, § 5: June 1, 2001. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that numerous health care workers are presently exposed through the use of needles to bloodborne pathogens, serious viruses and diseases, including the human immunodeficiency virus (HIV), hepatitis B, and hepatitis C,

and other potentially fatal diseases. The needleless systems or sharps with engineered sharps injury protections required under this act will provide significant protections to the lives and health of health care workers. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on June 1, 2001."

RESEARCH REFERENCES

ALR. Liability in tort for interference with physician's contract or relationship with hospital. 7 ALR 4th 572.

Hospital's liability for patient's injury or death as result of fall from bed. 9 ALR 4th 149.

Hospital's liability for patient's injury or

death resulting from escape or attempted escape. 37 ALR 4th 200.

Liability of hospital or clinic for sexual relationships with patients by staff physicians, psychologists, and other healers. 45 ALR 4th 289.

20-9-301. Posting of room rates.

(a) All public and private hospitals located and operated in this state shall post in some conspicuous place in each patient's room the daily room rates for both a private and a semiprivate room.

(b) Any hospital or person violating subsection (a) of this section shall be guilty of a violation and upon conviction shall be subject to a fine of not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00) for each violation.

History. Acts 1967, No. 91, §§ 1, 2; A.S.A. 1947, §§ 82-355, 82-356; Acts 2005, No. 1994, § 105.

Amendments. The 2005 amendment substituted "violation" for "misdemeanor" in (b).

20-9-302. Abortion clinics, health centers, etc.

(a) Any clinic, health center, or other facility in which the pregnancies of women known to be pregnant are willfully terminated or aborted, which activity is a primary function of the clinic, health center, or facility, shall be licensed by the Division of Health of the Department of Health and Human Services. The facilities, equipment, procedures, techniques, and conditions of those clinics or similar facilities shall be subject to periodic inspection by the division.

(b) The division may adopt appropriate rules and regulations regarding the facilities, equipment, procedures, techniques, and conditions of clinics and other facilities subject to the provisions of this section to assure that the facilities, equipment, procedures, techniques, and conditions are aseptic and do not constitute a health hazard.

(c) The division may levy and collect an annual fee of five hundred dollars (\$500) per facility for issuance of a permanent license to an abortion facility.

(d) Applicants for a license shall file applications upon such forms as are prescribed by the division. A license shall be issued only for the premises and persons in the application and shall not be transferable.

(e) A license shall be effective on a calendar-year basis and shall expire on December 31 of each calendar year. Applications for annual license renewal shall be postmarked no later than January 2 of the succeeding calendar year. License applications for existing institutions received after that date shall be subject to a penalty of two dollars (\$2.00) per day for each day after January 2.

(f) Subject to such rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the division may transfer all unexpended funds relative to the abortion clinics that pertain to fees collected, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

(g) All fees levied and collected under this section are special revenues and shall be deposited into the State Treasury, there to be credited to the Public Health Fund.

History. Acts 1983, No. 509, §§ 1, 2; A.S.A. 1947, §§ 82-367, 82-368; Acts 1987, No. 144, § 1.

or fetal material resulting from an abortion, §§ 20-17-801, 20-17-802.
Regulation of abortions, §§ 5-61-101, 20-16-601.

Cross References. Disposition of fetus

RESEARCH REFERENCES

UALR L.J. Legislative Survey, Health Law, 8 UALR L.J. 583.

20-9-303. [Repealed.]

Publisher's Notes. This section, concerning medical treatment for sexual assault victims, was repealed by Acts 2001, No. 993, § 6. The section was derived

from Acts 1985, No. 400, §§ 1, 2; 1985, No. 838, §§ 1, 2; A.S.A. 1947, §§ 41-1828, 41-1829; Acts 1991, No. 612, § 4; 1993, No. 403, § 12.

20-9-304. Use of records for medical research.

(a) All information, interviews, reports, statements, memoranda, or other data of the State Board of Health, the Arkansas Medical Society, allied medical societies, or in-hospital staff committees of licensed hospitals, but not the original medical records pertaining to the patients, used in the course of medical studies for the purpose of reducing morbidity or mortality, as provided in this section, shall be strictly confidential and shall be used only for medical research.

(b) Any authorized person, hospital, sanatorium, nursing home, rest home, or other organization may provide information, interviews, reports, statements, memoranda, or other data relating to the condition

and treatment of any person to any of the following for use in the course of studies for the purpose of reducing morbidity or mortality:

(1) The board;

(2) The Arkansas Medical Society or any committee or allied society thereof;

(3) Any other national medical organization approved by the board or any committee or allied medical society therein; or

(4) Any in-hospital staff committee of licensed hospitals.

(c) No liability for damages or other relief shall arise or be enforced against any authorized person, institution, or organization for:

(1) Providing the information or material;

(2) Releasing or publishing the findings and conclusions of the groups to advance medical research and medical education; or

(3) Releasing or publishing generally a summary of the studies.

(d)(1) The identity of the person whose condition or treatment has been studied shall be confidential and shall not be revealed under any circumstances.

(2) Any information furnished shall not contain the name of the person upon whom information is furnished and shall not violate the confidential relationship of patient and doctor.

(e)(1) Except for the original medical records pertaining to the patient, all information, interviews, reports, statements, memoranda, or other data furnished under this section and any findings or conclusions resulting from the studies are declared to be privileged communications that may not be used or offered or received in evidence in any legal proceeding of any kind.

(2) Except for the original medical records pertaining to the patient, any attempt to use or offer the information, interviews, reports, statements, memoranda or other data, findings, or conclusions, or any part thereof, shall constitute prejudicial error in any proceeding unless waived by the interested parties.

(f)(1) Physicians and others appointed to hospital utilization review committees for the purpose of determining the optimum use of hospital services shall be immune from liability with respect to decisions made as to utilization and actions thereunder so long as the physicians or others act in good faith.

(2) However, nothing in this section shall be construed to relieve any patient's personal physician of any liability which he or she may have in connection with the treatment of the patient.

(g) Nothing in this section shall be construed to prevent any court from subpoenaing the medical records of any patient.

History. Acts 1969, No. 198, §§ 1, 2;
A.S.A. 1947, §§ 82-357, 82-358.

RESEARCH REFERENCES

Ark. L. Rev. Watkins, Access to Public Records Under the Arkansas Freedom of Information Act, 37 Ark. L. Rev. 741.

20-9-305. Annual reports — Nonprofit hospitals.

(a)(1) Any nonprofit hospital association or corporation organized under the laws of this state that operates and maintains a hospital facility in this state primarily for providing hospital services for the employees of any corporation or company engaged in interstate commerce shall file annually with the Director of the Department of Finance and Administration a detailed report of income, fees, charges, and contributions from all sources received by it during the year, together with the expenses and disbursements of the corporation or association during the year.

(2) The report shall be filed on or before April 1 in each year.

(3) A copy of the report shall be furnished to each member of the hospital association or corporation upon the request of any member.

(b) Any nonprofit hospital association or corporation failing or refusing to file the report as required in subsection (a) of this section or which fails or refuses to furnish any member a copy of the report or statement upon request shall be guilty of a violation and shall be subject to a fine of ten dollars (\$10.00) for each day that the violation continues.

(c)(1) The provisions of this section shall not apply to any nonprofit hospital association or corporation that operates and maintains a hospital facility in any county of this state having a population of not less than twenty-five thousand six hundred (25,600) nor more than twenty-five thousand seven hundred (25,700), according to the 1970 Federal Decennial Census.

(2) The provisions of this section shall not be applicable with respect to any nonprofit hospital associations or corporations that operate and maintain a hospital facility in any county of this state having a population of not less than forty-seven thousand (47,000) nor more than fifty thousand (50,000), according to the 1970 Federal Decennial Census.

History. Acts 1971, No. 452, §§ 1-3; A.S.A. 1947, §§ 82-360 — 82-362; Acts 2005, No. 1994, § 106.

Amendments. The 2005 amendment substituted "violation" for "misdemeanor" in (b).

20-9-306. Annual reports — Public-supported hospitals.

(a) All public-supported hospitals in the State of Arkansas shall publish an annual report including financial statements showing profits, expenditures, and operating costs.

(b) Every such hospital shall publish its annual report in a newspaper of general circulation within the county where it is located.

History. Acts 1975 (Extended Sess., 1976), No. 1231, §§ 1, 2; A.S.A. 1947, §§ 82-365, 82-366; reen. Acts 1987, No. 1016, §§ 1, 2.

A.C.R.C. Notes. This section was re-enacted by Acts 1987, No. 1016, §§ 1, 2.

Acts 1987, No. 834, provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

20-9-307. Itemized statement for services, drugs, and supplies.

(a)(1) Upon the patient's request at the time of discharge of each patient or at the time of billing the patient or the insurance company for the patient or at the time of billing the patient or the insurance company for the hospital services, drugs, and supplies, each hospital in the state, except those operated by the State of Arkansas, shall furnish to the patient and to the insurance company an itemized listing of all services, drugs, and supplies to be billed to that person while a patient in the hospital.

(2) The itemized statement shall be furnished to the patient and the insurance company no later than thirty (30) days after discharge of the patient.

(3) In addition, at the time of discharge each patient discharged from a hospital in this state shall be advised in writing of his or her right to receive the itemized statement for services, drugs, and supplies required by this section.

(4) The State Board of Health shall adopt rules specifying the items to be included and the manner in which they shall be presented on itemized statements as required in this section.

(b) The administrator or the agent of any hospital who fails or refuses to provide the itemized statement upon request as required in this section or fails or refuses at the time of discharge of any patient to advise the patient of his or her right to receive the itemized statement provided in this section shall be guilty of a violation and upon conviction shall be subject to a fine of not less than fifty dollars (\$50.00) nor more than one hundred fifty dollars (\$150) for each violation.

History. Acts 1987, No. 348, §§ 1-3; Acts 2005, No. 1994, § 107.

substituted "violation and upon conviction" for "misdemeanor and" in (b).

Amendments. The 2005 amendment

20-9-308. Advice by hospital employees to reviewing committees.

When requested, any physician, surgeon, hospital administrator, nurse, technologist, and any other person engaged in work in or about a licensed hospital and having any information or knowledge relating to the medical and hospital care provided in the hospital or to the efficient use of the hospital facilities shall be obligated to advise committees reviewing such matters with respect to all the facts or information possessed by the individual with reference to such care or use.

History. Acts 1977, No. 445, § 2; § 2, was formerly codified as § 14-265-A.S.A. 1947, § 19-4724. 112.

A.C.R.C. Notes. Acts 1977, No. 445,

CASE NOTES

Cited: Baxter County Newspapers, Inc.
v. Medical Staff of Baxter Gen. Hosp., 273
Ark. 511, 622 S.W.2d 495 (1981).

20-9-309. Definition of Emergency Medical Care Act.

(a) This section may be cited as the "Definition of Emergency Medical Care Act".

(b) Because of the need for rapid assessment and care, in order to protect the life and health of the people of Arkansas during a medical emergency, it is found and declared necessary:

(1) To establish a definition for emergency medical care;

(2) To ensure that emergency medical care is provided in a timely manner by licensed and qualified personnel at a hospital's emergency department; and

(3) To ensure that emergency medical care is not delayed or denied based on:

(A) A person's ability to pay for expenses incurred during a medical emergency; or

(B) Prospective authorization of treatment by an insurance company, health maintenance organization, hospital medical service corporation, health benefit plan, or any other insurer.

(c) As used in this section:

(1) "Emergency medical care" means health care services provided in a hospital emergency facility to evaluate and treat medical conditions of a recent onset and severity, including, but not limited to, severe pain that would lead a prudent lay person, possessing an average knowledge of medicine and health, to believe that his or her condition, sickness, or injury is of such a nature that failure to get immediate medical care could result in:

(A) Placing the patient's health in serious jeopardy;

(B) Serious impairment to bodily functions; or

(C) Serious dysfunction of any bodily organ or part;

(2) "Emergency medical providers" means hospitals licensed by the Division of Health of the Department of Health and Human Services, hospital based services, and physicians licensed by the Arkansas State Medical Board who provide emergency medical care; and

(3) "Prospective authorization" means contacting any insurer, health maintenance organization, hospital medical service corporation, or health benefit plan that is not physically present in the hospital's emergency department at the time the patient presents for emergency medical care for approval or authorization to evaluate and treat the patient.

(d)(1) Once a person qualifying for emergency medical care presents to an emergency department, that person shall be evaluated by medical

personnel. This evaluation may include diagnostic testing to assess the extent of the condition, sickness, or injury and radiographic procedures and interpretations by a radiologist.

(2) Appropriate intervention may be initiated by medical personnel to stabilize any condition presenting under this section prior to receiving authorization for the treatment by an insurer, health maintenance organization, hospital medical service corporation, or health benefit plan.

History. Acts 1995, No. 1358, §§ 1-4.

20-9-310. No liability for furnishing medical records pursuant to subpoena.

Notwithstanding any other law to the contrary, no person or medical facility serving as a custodian of health or medical records shall be subject to any civil or criminal liability for providing access to or producing copies of the records pursuant to a subpoena issued by any board, agency, commission, prosecuting attorney, or grand jury.

History. Acts 1999, No. 1536, § 12.

20-9-311. Findings.

(a) The General Assembly finds that:

(1) Numerous workers who are occupationally exposed to blood-borne pathogens have contracted fatal and other serious viruses and diseases, including the human immunodeficiency virus (HIV), hepatitis B, and hepatitis C, from exposure to blood and other potentially infectious materials in their workplaces;

(2) In 1991, the Occupational Safety and Health Administration issued a standard regulating occupational exposure to blood-borne pathogens including the human immunodeficiency virus (HIV), the hepatitis B virus, and the hepatitis C virus;

(3) Compliance with the blood-borne pathogens standard has significantly reduced the risk that workers will contract a blood-borne disease in the course of their work;

(4) Nevertheless, occupational exposure to blood-borne pathogens from accidental sharps injuries in health care settings continues to be a serious problem;

(5) In March 2000, the Centers for Disease Control and Prevention estimated that more than three hundred eighty thousand (380,000) percutaneous injuries from contaminated sharps occur annually among health care workers in United States hospital settings;

(6) Estimates for all health care settings are that six hundred thousand (600,000) to eight hundred thousand (800,000) needlestick and other percutaneous injuries occur among health care workers annually involving sharps contaminated with blood-borne pathogens such as the human immunodeficiency virus (HIV), hepatitis B, or hepatitis C;

(7) Since publication of the blood-borne pathogens standard in 1991, there has been a substantial increase in the number and assortment of effective engineering controls available to employers;

(8) There is now a large body of research and data concerning the effectiveness of newer engineering controls, including safer medical devices;

(9) Numerous studies have demonstrated that the use of safer medical devices such as needleless systems and sharps with engineered sharps injury protections can be extremely effective in reducing accidental sharps injuries when they are part of an overall blood-borne pathogens risk-reduction program;

(10) In March 2000, the centers estimated that sixty-two percent (62%) to eighty-eight percent (88%) of sharps injuries potentially can be prevented by the use of safer medical devices depending on the type of device used and the procedure involved;

(11) Training and education in the use of safer medical devices and safer work practices are significant elements in the prevention of percutaneous exposure incidents;

(12) Staff involvement in the device selection and evaluation process is also an important element in achieving a reduction in sharps injuries, particularly as newer, safer devices are introduced into work settings;

(13) Congress has recognized the seriousness of the dangers of sharps injuries by passing the Needlestick Safety and Prevention Act, Pub. L. No. 106-430; and

(14) Considerable time will lapse before federal regulations are published, hospitals prepare implementation plans, federal agencies review implementation plans, and hospitals begin implementation.

(b) As used in this section:

(1) "High-risk area" means the emergency department, operating rooms, and intensive care units in acute care hospitals;

(2) "Needleless systems" means devices that do not use needles for:

(A) The collection of bodily fluids or withdrawal of bodily fluids after initial venous or arterial access is established;

(B) The administration of medication or fluids; or

(C) Any other procedure involving the potential for occupational exposure to blood-borne pathogens due to percutaneous injuries from contaminated sharps;

(3) "Sharps" means a needle used to withdraw bodily fluids, access a vein or artery, or administer medication or other fluids; and

(4) "Sharps with engineered sharps injury protections" means a nonneedle sharp or a needle device used for withdrawing bodily fluids, accessing a vein or artery, or administering medications or other fluids with a built-in safety feature or mechanism that effectively reduces the risk of an exposure incident.

(c) Immediately after June 1, 2001, hospitals shall begin purchasing needleless systems or sharps with engineered sharps injury protections, or both, for use in high-risk areas, with the goal of ensuring that within eighteen (18) months after June 1, 2001, all high-risk areas shall

be supplied exclusively with needleless systems or sharps with engineered sharps injury protections, or both.

(d) Any prefilled syringe approved by the Food and Drug Administration shall not be subject to the provisions of this section until July 2005.

History. Acts 2001, No. 451, §§ 1-4.

RESEARCH REFERENCES

UALR L.J. Survey of Legislation, 2001
Arkansas General Assembly, Public
Health and Welfare, 24 UALR L.J. 557.

SUBCHAPTER 4 — FREE-STANDING BIRTHING CENTERS

SECTION.

20-9-401. Definitions.

20-9-402. Deliveries — Dismissal of
mother and infant.

20-9-403. Regulation by Division of
Health of the Department

SECTION.

of Health and Human Ser-
vices.

20-9-404. License fee.

20-9-405. Practice of midwifery.

A.C.R.C. Notes. References to “this chapter” in subchapters 1-3 or 5-9 may not apply to this subchapter which was enacted subsequently.

Publisher’s Notes. Former subchapter 4, dealing with the State Medical Services Advisory Commission, was repealed by Acts 1989, No. 536, § 7. The subchapter was derived from the following sources:

20-9-401. Acts 1965, No. 372, § 1;
A.S.A. 1947, § 7-601.

20-9-402. Acts 1965, No. 372, § 2;
A.S.A. 1947, § 7-602.

20-9-403. Acts 1965, No. 372, § 3;
A.S.A. 1947, § 7-603.

20-9-404. Acts 1965, No. 372, § 4;
A.S.A. 1947, § 7-604.

20-9-401. Definitions.

As used in this subchapter:

(1) “Free-standing birthing center” means any facility, institution, or place, which is not an ambulatory surgical center or a hospital or in a hospital, organized to provide family-centered maternity care for women and childbearing families in which births are planned to occur in a homelike atmosphere away from the mothers’ usual residences following a low-risk pregnancy; and

(2) “Low-risk pregnancy” means a normal uncomplicated pregnancy as determined by a generally accepted course of prenatal care and expectation of a normal uncomplicated birth as defined by reasonable and generally accepted criteria of maternal and fetal health.

History. Acts 1997, No. 891, § 1.

20-9-402. Deliveries — Dismissal of mother and infant.

(a) A free-standing birthing center shall have a qualified medical director, and deliveries shall be performed by a qualified physician or by a certified nurse midwife in accordance with an arrangement with a physician as required by § 17-87-101 et seq.

(b) A mother and her infant shall be dismissed from a free-standing birthing center within twenty-four (24) hours of the admission.

History. Acts 1997, No. 891, § 2.

20-9-403. Regulation by Division of Health of the Department of Health and Human Services.

(a) The Division of Health of the Department of Health and Human Services shall establish and enforce regulations:

(1) Setting minimum standards for the construction, maintenance, and operation of a free-standing birthing center; and

(2) Setting qualifications for medical directors of free-standing birthing centers and for physicians who will perform deliveries in free-standing birthing centers.

(b) A free-standing birthing center shall meet life safety code and construction standards developed by the National Fire Protection Association and shall comply with regulations developed by the division.

History. Acts 1997, No. 891, § 3.

20-9-404. License fee.

The Division of Health of the Department of Health and Human Services may levy and collect a fee for the issuance of an annual license to a free-standing birthing center. The license fee for a free-standing birthing center shall be an annual fee of one thousand dollars (\$1,000).

History. Acts 1997, No. 891, § 5.

20-9-405. Practice of midwifery.

Nothing in this subchapter shall be construed to prohibit the lawful practice of lay midwifery in any location under the Licensed Lay Midwife Act, § 17-85-101 et seq.

History. Acts 1997, No. 891, § 4.

SUBCHAPTER 5 — PEER REVIEW COMMITTEES

SECTION.

20-9-501. Definition.

20-9-502. Liability of committee members.

SECTION.

20-9-503. Proceeding and records confidential — Exception.

Effective Dates. Acts 1975, No. 191, § 6: Feb. 18, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is currently no law which grants specific immunity to the members of peer review committees as defined in Section 1 hereof and functioning in the State of Arkansas; that it is essential to the proper and effective operations of such committees that immunity be granted members of such committees for acts of the members performed within the scope of the functions of the committee and without malice or fraud; that this Act is designed to grant

such immunity only in actions by providers of health services against such committees or the members thereof; that it is urgent that this Act be given effect at the earliest possible date to grant this limited immunity to peer review committees in order that they may perform their functions and duties more effectively. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

ALR. Negligence in failing to review or supervise treatment given by doctor, or to require consultation. 12 ALR 4th 57.

Disclosure of privileged proceedings of

hospital medical review or doctor evaluation processes. 60 ALR 4th 1273.

C.J.S. 41 C.J.S., Hospitals, § 10.

20-9-501. Definition.

As used in this subchapter, "peer review committee" or "committee" means a committee of a hospital medical staff or a committee of a state or local professional association that is formed to:

(1) Evaluate and improve the quality of health care rendered by providers of health services; or

(2) Determine that:

(A) Health services rendered were professionally indicated or were performed in compliance with the applicable standard of care; or

(B) The cost of health care rendered was considered reasonable by the providers of professional health services in the area.

History. Acts 1975, No. 191, § 1; A.S.A. 1947, § 82-3201; Acts 1999, No. 1536, § 9.

20-9-502. Liability of committee members.

(a) There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any member of a peer review committee for any act or proceeding undertaken or performed within

the scope of the functions of the committee if the committee member acts without malice or fraud.

(b) This subchapter shall not be construed to confer immunity from liability on any professional association or upon any health professional while performing services other than as a member of a peer review committee.

History. Acts 1975, No. 191, §§ 2, 3;
A.S.A. 1947, §§ 82-3202, 82-3203.

20-9-503. Proceeding and records confidential — Exception.

(a)(1) The proceedings and records of a peer review committee shall not be subject to discovery or introduction into evidence in any civil action against a provider of professional health services arising out of the matters which are subject to evaluation and review by the committee.

(2) No person who was in attendance at a meeting of the committee shall be permitted or required to testify in any such civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or any members thereof.

(b)(1) However, information, documents, or records otherwise available from original sources are not to be construed as immune from discovery or use in any such action merely because they were presented during the proceedings of the committee.

(2) Nor shall any person who testifies before the committee or who is a member of the committee be prevented from testifying as to matters within his or her knowledge, but the witness shall not be asked about his or her testimony before the committee or about opinions formed by him or her as a result of the committee hearings.

(c) The submission of the peer review proceedings, minutes, records, reports, and communications to a hospital governing board shall not operate as a waiver of the privilege.

History. Acts 1975, No. 191, § 4;
A.S.A. 1947, § 82-3204; Acts 1999, No. 1536, § 10.

CASE NOTES

Revocation of Staff Privileges.

All records, documents, and other information provided to the state medical board regarding revocation of the medical staff privileges of defendant are absolutely privileged by Arkansas statutory

provisions and cannot be discovered or admitted into evidence in a medical malpractice suit. *Hendrickson v. Leipzig*, 715 F. Supp. 1443 (E.D. Ark. 1989).

Cited: *Saline Mem. Hosp. v. Berry*, 321 Ark. 588, 906 S.W.2d 297 (1995).

SUBCHAPTER 6 — CONSENT TO TREATMENT

SECTION.

20-9-601. Definition.

20-9-602. Consent generally.

20-9-603. Implied consent.

SECTION.

20-9-604. Consent given by court in emergency.

Effective Dates. Acts 1973, No. 328, § 5: Mar. 14, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that at the present time a minor will not be allowed to undergo certain medical or surgical procedures without the consent of a parent or guardian and that the law is unclear as to the consent required before surgical or medical procedures can be performed on other individuals not capable of consent due to injury or incompetence, and that this present situation greatly impairs medical treatment and frequently endangers the life and limb of the patient when consent for medical and surgical treatment is unavailable and that in order to alleviate this problem it is necessary for this Act to become effective immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1977, No. 805, § 5: Mar. 28, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is confusion in the minds of many people as to when consent to emergency medical treatment shall be implied under the law even though consent is apparently refused or withheld by one authorized to consent; that where a minor, adult of unsound mind, pregnant female or parent of a minor child is in dire need of emergency medical treatment, the

State of Arkansas must consent to such treatment for the good of all when consent is withheld by one empowered or capable of consent; and that this Act should be given effect immediately to accomplish these purposes. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 511, § 5: Mar. 16, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is confusion in the minds of many people as to the circumstances in which a parent can consent for its child, natural, adopted, stepchild or foster child, and that a married person or aged person may not be allowed to undergo certain medical or surgical procedures without appropriate consent and that the law is unclear as to the consent required before surgical or medical procedures can be performed, and that this present situation greatly impairs medical treatment and frequently endangers the life and limb of the patient when consent for medical and surgical treatment is unavailable and that in order to alleviate this problem it is necessary for this Act to become effective immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

ALR. Consent of mentally disordered patient. 8 ALR 4th 464.

Misrepresentation of the nature and hazards of treatment. 42 ALR 4th 543.

Medical practitioner's liability for treatment given child without parent's consent. 67 ALR 4th 511.

Nonconsensual treatment of involuntarily committed mentally ill persons with neuroleptic or antipsychotic drugs as violative of state constitutional guaranty. 74 ALR 4th 1099.

Am. Jur. 61 Am. Jur. 2d, Physicians, § 157 et seq.

Ark. L. Notes. Leflar, Advance Health Care Directives Under Arkansas Law, 1994 Ark. L. Notes 37.

C.J.S. 70 C.J.S., Phys & S., § 114 et seq.

Ark. L. Rev. Leflar, Liberty and Death: Advance Health Care Directives and the Law of Arkansas, 39 Ark. L. Rev. 375.

UALR L.J. On Teaching Law and Medicine, Spies, 1 UALR L.J. 412.

20-9-601. Definition.

- (a) As used in this subchapter, “of unsound mind” means the inability to perceive all relevant facts related to one’s condition and proposed treatment so as to make an intelligent decision based thereon, whether or not the inability is:
- (1) Only temporary, has existed for an extended period of time, or occurs or has occurred only intermittently; or
 - (2) Due to natural state, age, shock or anxiety, illness, injury, drugs or sedation, intoxication, or other cause of whatever nature.
- (b) An individual shall not be considered to be of unsound mind based solely upon his or her refusal of medical care or treatment.

History. Acts 1981, No. 511, § 2; A.S.A. 1947, § 82-363.1.

RESEARCH REFERENCES

UALR L.J. Legislative Survey, Miscellaneous, 4 UALR L.J. 605.

20-9-602. Consent generally.

- It is recognized and established that, in addition to such other persons as may be so authorized and empowered, any one (1) of the following persons is authorized and empowered to consent, either orally or otherwise, to any surgical or medical treatment or procedure not prohibited by law which may be suggested, recommended, prescribed, or directed by a licensed physician:
- (1) Any adult, for himself or herself;
 - (2) Any parent, whether an adult or a minor, for his or her minor child or for his or her adult child of unsound mind whether the child is of the parent’s blood, an adopted child, a stepchild, or a foster child. However, the father of an illegitimate child cannot consent for the child solely on the basis of parenthood;
 - (3) Any married person, whether an adult or a minor, for himself or herself;
 - (4) Any female, regardless of age or marital status, for herself when given in connection with pregnancy or childbirth, except the unnatural interruption of a pregnancy;
 - (5) Any person standing in loco parentis, whether formally serving or not, and any guardian, conservator, or custodian, for his or her ward or other charge under disability;

- (6) Any emancipated minor, for for himself or herself;
- (7) Any unemancipated minor of sufficient intelligence to understand and appreciate the consequences of the proposed surgical or medical treatment or procedures, for himself or herself;
- (8) Any adult, for his or her minor sibling or his or her adult sibling of unsound mind;
- (9) During the absence of a parent so authorized and empowered, any maternal grandparent and, if the father is so authorized and empowered, any paternal grandparent, for his or her minor grandchild or for his or her adult grandchild of unsound mind;
- (10) Any married person, for a spouse of unsound mind;
- (11) Any adult child, for his or her mother or father of unsound mind; and
- (12) Any minor incarcerated in the Department of Correction or the Department of Community Correction, for himself or herself.

History. Acts 1973, No. 328, § 1; 1981, No. 511, § 1; A.S.A. 1947, § 82-363; Acts 1995, No. 632, § 1; 1997, No. 875, § 1.

RESEARCH REFERENCES

UALR L.J. Legislative Survey, Miscellaneous, 4 UALR L.J. 605.

CASE NOTES

Cited: *Neff v. St. Paul Fire & Marine Ins. Co.*, 304 Ark. 18, 799 S.W.2d 795 (1990).

20-9-603. Implied consent.

In addition to any other instances in which consent is excused or implied at law, consent to surgical or medical treatment or procedures suggested, recommended, prescribed, or directed by a licensed physician will be implied in the following circumstances:

- (1)(A) When an emergency exists and there is no one immediately available who is authorized, empowered to, or capable of consent.
- (B) An emergency is defined as a situation in which, in competent medical judgment, the proposed surgical or medical treatment or procedures are immediately or imminently necessary and any delay occasioned by an attempt to obtain a consent would reasonably be expected to jeopardize the life, health, or safety of the person affected or would reasonably be expected to result in disfigurement or impaired faculties; and
- (2) When any emergency exists, there has been a protest or refusal of consent by a person authorized and empowered to do so, and there is no other person immediately available who is authorized, empowered, or capable of consenting but there has been a subsequent material and morbid change in the condition of the affected person.

History. Acts 1973, No. 328, § 2; 1977, No. 805, § 1; A.S.A. 1947, § 82-364.

20-9-604. Consent given by court in emergency.

(a)(1) Except as provided in subsection (e) of this section, consent may be given by a court when:

(A) An emergency exists;

(B) There has been a protest or refusal of consent by a person authorized and empowered to do so; and

(C) There is no other person immediately available who is authorized, empowered, or capable of consent.

(2) The consent shall be given upon the presentation of a petition accompanied by the written advice or certificate of one (1) or more licensed physicians that in their professional opinion there is an immediate or imminent necessity for medical or surgical treatment or procedures.

(3) Any circuit judge may summarily grant injunctive and declaratory relief ordering and directing that the necessary surgical or medical treatment or procedures be rendered, provided that the affected person is:

(A) A pregnant female in the last trimester of pregnancy;

(B) A person of insufficient age or mental capacity to understand and appreciate the nature of the proposed surgical or medical treatment and the probable consequences of refusal of the treatment; or

(C) A parent of a minor child, provided that the court in its discretion finds that the life or health of the parent is essential to the child's financial support or physical or emotional well-being.

(b) Any circuit judge granting the declaratory and injunctive relief directing the provision of surgical or medical treatment or procedures pursuant to this section shall be immune from liability based on any claim that the surgical or medical treatment or procedures for the affected person should not have been administered.

(c) The reasonable expense incurred for emergency surgical or medical treatment or procedures administered pursuant to this section shall be borne by:

(1) The estate of the person affected;

(2) Any person liable at law for the necessities of the person affected; or

(3) If the estate or person is unable to pay, the county of residence of the person receiving the surgical or medical care.

(d) Upon request of an attending physician, any other licensed physician, or a representative of a hospital to which a patient has been admitted or presented for treatment, it shall be the duty of the prosecuting attorney, or his or her designee, of the county in which the surgical or medical care is proposed to be rendered to give his or her assistance in the presentation of the petition, with medical advice or certificate, and in obtaining an order from the court of proper jurisdiction.

(e)(1) Consent may be given by a court when an emergency exists and there is no one immediately available who is authorized, empowered to, or capable of consent for a person of unsound mind or there has been a subsequent material and morbid change in the condition of the affected person who is in the custody of the Department of Correction or the Department of Community Correction.

(2) The consent shall be given upon the presentation of a petition accompanied by the written advice or certificate of one (1) or more licensed physicians that in their professional opinion there is an immediate or imminent necessity for medical or surgical treatment or procedures.

(3) Any circuit judge may summarily grant injunctive and declaratory relief ordering and directing that the necessary surgical or medical treatment or procedures be rendered.

History. Acts 1977, No. 805, § 2; A.S.A. 1947, § 82-364.1; Acts 1997, No. 875, § 2.

SUBCHAPTER 7 — MEDICARE

SECTION.

20-9-701. Uniform Medicare charges.

20-9-702. Immunity of hospital utilization review committees.

Preambles. Acts 1973, No. 416, contained a preamble which read: "Whereas, the Medicare program, which is financed by taxpayer funds provides for payment to physicians for medical services rendered to Medicare patients; and

"Whereas, under the present system, payments to physicians are based on five localities resulting in reasonable charge prevailing limits in urban areas which are frequently higher than the prevailing limits in rural areas for similar services; and

"Whereas, the rural areas of the State are in dire need of additional physicians to meet the health needs of those areas, yet, we are discriminating against and discouraging physicians going to rural areas by providing lower prevailing limits of payment for services rendered by such physicians to Medicare patients; and

"Whereas, it is believed that since the Medicare program is financed by tax funds contributed to equally by the citi-

zens in all areas of the State, reasonable charge prevailing limits for physician's services under the program should be uniform in all areas of the State;

"Now, therefore..."

Effective Dates. Acts 1969, No. 87, § 2: Feb. 21, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is essential that physicians and others serving on hospital utilization review committees for the purpose of determining questions relative to the hospitalization of Medicare patients be given immunity from liability for decisions of judgment in the performance of their duties so long as such decisions are made in good faith, and that this Act is immediately necessary to provide such immunity. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in effect from the date of its passage and approval."

RESEARCH REFERENCES

ALR. Fraud in connection with claims under Medicaid, Medicare, or similar welfare programs for providing medical services. 32 ALR 4th 671.

Filing of false insurance claims for medical services as ground for disciplinary

action against dentist, physician, or other medical practitioner. 70 ALR 4th 132.

Am. Jur. 70C Am. Jur. 2d, Soc. Sec., § 2045 et seq.

C.J.S. 81 C.J.S., Soc. S. & P.W., § 126 et seq.

20-9-701. Uniform Medicare charges.

The agency administering the Medicare program in Arkansas shall establish reasonable charges on a single statewide basis according to field of practice. The reasonable charges shall be based on uniform prevailing limits for all physicians throughout the state for the same or similar services.

History. Acts 1973, No. 416, § 1; A.S.A. 1947, § 66-5101.

20-9-702. Immunity of hospital utilization review committees.

- (a) Physicians and others appointed to hospital utilization review committees for the purpose of determining questions relating to the hospitalization of Medicare patients under the Health Insurance for the Aged Act, 42 U.S.C. § 1395 et seq., shall be immune from liability with respect to decisions made as to such questions as long as the physicians or others act in good faith and without malice.
- (b) However, nothing in this section shall be construed to relieve any patient's personal physician of any liability which he or she may have in connection with the treatment of the patient.

History. Acts 1969, No. 87, § 1; A.S.A. 1947, § 82-359.

SUBCHAPTER 8 — TRANSPLANTS

SECTION.

- 20-9-801. Declaration of policy.
- 20-9-802. Limitation of liability.

Cross References. Uniform Anatomical Gift Act, § 20-17-601 et seq.

Effective Dates. Acts 1971, No. 462, § 3: Mar. 30, 1971. Emergency clause provided: "It having been found by the General Assembly that the transplantation and transfusion of human tissues is a necessary part of the protection of human health and life and that hospitals and

physicians are reluctant to perform these services under existing conditions and that the immediate passage of this act is necessary for the protection of the health, safety and welfare of the people of the State of Arkansas, an emergency is hereby declared to exist and this act shall take effect immediately upon its passage and approval."

RESEARCH REFERENCES

Ark. L. Notes. Copeland, A Statutory Do Its Rules Apply?, 1990 Ark. L. Notes Primer: Article 2 of the U.C.C., — When 39:

20-9-801. Declaration of policy.

(a) The availability of scientific knowledge, skills, and materials for the transplantation, injection, transfusion, or transfer of human tissue, organs, blood, and components thereof is important to the health and welfare of the people of this state.

(b) The imposition of legal liability without fault upon the persons and organizations engaged in such scientific procedures inhibits the exercise of sound medical judgment and restricts the availability of important scientific knowledge, skills, and materials.

(c) It is therefore the public policy of this state to promote the health and welfare of the people by limiting the legal liability arising out of such scientific procedures to instances of negligence or willful misconduct.

History. Acts 1971, No. 462, § 1; A.S.A. 1947, § 82-1607.

CASE NOTES

Cited: *Kirkendall v. Harbor Ins. Co.*, 698 F. Supp. 768 (W.D. Ark. 1988).

20-9-802. Limitation of liability.

No physician, surgeon, hospital, blood bank, tissue bank, or other person or entity who donates, obtains, prepares, transplants, injects, transfuses, or otherwise transfers or who assists or participates in obtaining, preparing, transplanting, injecting, transfusing, or transferring any tissue, organ, blood, or component thereof from one (1) or more human beings, living or dead, to another human being, shall be liable as the result of the activity, except that each such person or entity shall remain liable for negligence or willful misconduct only.

History. Acts 1971, No. 462, § 2; A.S.A. 1947, § 82-1608.

CASE NOTES

Supplying of Blood.

The supplying of blood for transfusions is a service rather than a product and the implied warranties of the Uniform Commercial Code do not apply to blood; further, blood is not a "product" for purposes

of imposing strict liability in tort. *Kirkendall v. Harbor Ins. Co.*, 887 F.2d 857 (8th Cir. 1989).

Cited: *Kirkendall v. Harbor Ins. Co.*, 698 F. Supp. 768 (W.D. Ark. 1988).

SUBCHAPTER 9 — UTILIZATION REVIEW

SECTION.
20-9-901. Purpose.
20-9-902. Definitions.
20-9-903. Certificate required.
20-9-904. When certificate not required.
20-9-905. Penalty.
20-9-906. Duties of State Board of Health.
20-9-907. Health insurance plans — Insurers.
20-9-908. Application for certification — Fee.

SECTION.
20-9-909. Information required with application.
20-9-910. Expiration of certificate — Renewal.
20-9-911. Revocation or denial of certificate.
20-9-912. Appeals.
20-9-913. Confidentiality.
20-9-914. Liability unaffected.

Effective Dates. Acts 1989, No. 537, § 19: Jan. 1, 1990.
Acts 1993, No. 1045, § 5: Apr. 12, 1993.
Emergency clause provided: “It is hereby found and determined by the General Assembly that a carry forward provision should apply to application fees in the utilization review program for the effective

administration of the program. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

20-9-901. Purpose.

The purpose of this subchapter is to:

- (1) Promote the delivery of quality health care in a cost-effective manner;
- (2) Foster greater coordination between payors and providers conducting utilization review activities;
- (3) Protect patients, business, and providers by ensuring that private review agents are qualified to perform utilization activities and to make informed decisions on the appropriateness of medical care; and
- (4) Ensure that private review agents maintain the confidentiality of medical records.

History. Acts 1989, No. 537, § 2.

20-9-902. Definitions.

As used in this subchapter:

- (1) “Board” means the State Board of Health;
- (2) “Certificate” means a certificate of registration granted by the State Board of Health to a private review agent;
- (3)(A) “Private review agent” means a nonhospital-affiliated person or entity performing utilization review on behalf of:
 - (i) An employer of employees in the State of Arkansas; or
 - (ii) A third party that provides or administers hospital and medical benefits to citizens of this state, including:

(a) A health maintenance organization issued a certificate of authority under and by virtue of the laws of the State of Arkansas; and

(b) A health insurer, nonprofit health service plan, health insurance service organization, or preferred provider organization or other entity offering health insurance policies, contracts, or benefits in this state.

(B) "Private review agent" does not include automobile, homeowner, or casualty and commercial liability insurers or their employees, agents, or contractors;

(4) "Utilization review" means a system for review which reviews the appropriate and efficient allocation of hospital resources and medical services given or proposed to be given to a patient or group of patients; and

(5) "Utilization review plan" means a description of the utilization review procedures of a private review agent.

History. Acts 1989, No. 537, § 1; 2001, added present (3)(B) and made related changes.
No. 1729, § 1.

Amendments. The 2001 amendment

20-9-903. Certificate required.

A private review agent who approves or denies payment or who recommends approval or denial of payment for hospital or medical services or whose review results in approval or denial of payment for hospital or medical services on a case-by-case basis may not conduct utilization review in this state unless the State Board of Health has granted the private review agent a certificate.

History. Acts 1989, No. 537, § 3.

20-9-904. When certificate not required.

(a) The State Board of Health may waive the requirements of this subchapter for the activities of a private review agent in connection with a contract with the federal government for utilization review of patients eligible for hospital and medical services under the Social Security Act.

(b) No certificate is required for those private review agents conducting general in-house utilization review for hospitals, home health agencies, preferred provider organizations, other managed care entities, clinics, private offices, or any other health facilities or entities, so long as the review does not result in the approval or denial of payment for hospital or medical services for a particular case. The general in-house utilization review is exempt from this subchapter.

(c) No certificate is required for utilization review by any Arkansas-licensed pharmacist or pharmacy, or organizations of either, while engaged in the practice of pharmacy, including, but not limited to,

dispensing of drugs, participation in drug utilization reviews, and monitoring patient drug therapy.

History. Acts 1989, No. 537, §§ 4, 9. referred to in this section, is codified primarily in Title 42 of the U.S. Code.
U.S. Code. The Social Security Act,

20-9-905. Penalty.

(a) A person who violates any provision of this subchapter or any regulation adopted under this subchapter shall be guilty of a violation and upon conviction shall be subject to a penalty not exceeding one thousand dollars (\$1,000).

(b) Each day that a violation is continued after the first conviction is a separate offense.

History. Acts 1989, No. 537, § 12; Acts substituted “violation” for “misdemeanor”
2005, No. 1994, § 108. in (a).

Amendments. The 2005 amendment

20-9-906. Duties of State Board of Health.

(a)(1) In accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., the State Board of Health shall adopt regulations to implement this subchapter.

(2) Regulations governing utilization review plans under this subchapter shall impose no greater requirements than those required for utilization review activities for state-certified health maintenance organizations under the laws of this state, as amended from time to time.

(3) Any information required by the board with respect to customers, patients, or utilization review procedures of a private review agent shall be held in confidence and not disclosed to the public.

(b) The board shall issue a certificate to an applicant that has met all the requirements of this subchapter and all applicable regulations of the board.

(c) The board may establish reporting requirements to:

(1) Evaluate the effectiveness of private review agents; and

(2) Determine if the utilization review programs are in compliance with this subchapter and applicable regulations.

(d) A certificate issued under this subchapter is not transferrable.

History. Acts 1989, No. 537, §§ 3, 10.

20-9-907. Health insurance plans — Insurers.

(a)(1) Every health insurance plan proposing to issue or deliver a health insurance policy or contract or administer a health benefit program which provides for the coverage of hospital and medical benefits and the utilization review of those benefits shall:

(A) Have a certificate in accordance with this subchapter; or

(B) Contract with a private review agent who has a certificate in accordance with this subchapter.

(2) Notwithstanding any other provisions of this subchapter, for claims in which the medical necessity of the provision of a covered benefit is disputed, a health service plan that does not meet the requirements of this subsection shall pay any person or hospital entitled to reimbursement under the policy or contract.

(b)(1) Every insurer proposing to issue or deliver a health insurance policy or contract or administer a health benefit program which provides for the coverage of hospital and medical benefits and the utilization review of such benefits shall:

(A) Have a certificate in accordance with this subchapter; or

(B) Contract with a private review agent that has a certificate in accordance with this subchapter.

(2) Notwithstanding any provision of this subchapter, for claims in which the medical necessity of the provision of a covered benefit is disputed, an insurer that does not meet the requirements of this subsection shall pay any person or hospital entitled to reimbursement under the policy or contract.

(c)(1) Any health insurer proposing to issue or deliver in this state a group or blanket health insurance policy or administer a health benefit program which provides for the coverage of hospital and medical benefits and the utilization review of such benefits shall:

(A) Have a certificate in accordance with this subchapter; or

(B) Contract with a private review agent that has a certificate in accordance with this subchapter.

(2) Notwithstanding any provision of this subchapter, for claims in which the medical necessity of the provision of a covered benefit is disputed, a health insurer that does not meet the requirements of this subsection shall pay any person or hospital entitled to reimbursement under the policy or contract.

History. Acts 1989, No. 537, §§ 14-16.

20-9-908. Application for certification — Fee.

(a) An applicant for a certificate shall:

(1) Submit an application to the State Board of Health; and

(2) Pay to the board the application fee established by the board through regulation.

(b) The application shall:

(1) Be on a form and accompanied by any supporting documentation that the board requires; and

(2) Be signed and verified by the applicant.

(c) The application fee required under this section shall be sufficient to pay for the administrative cost of the certification program and any other cost associated with carrying out this subchapter.

(d)(1) All application fees shall be special revenues and deposited to the credit of the Public Health Fund.

(2) Any unexpended balance of such fees at the end of each state fiscal year shall be carried forward to the next fiscal year to be used for the same intent and purposes as set forth in this subchapter.

History. Acts 1989, No. 537, § 5; 1993, No. 1045, § 1.

20-9-909. Information required with application.

In conjunction with the application, the private review agent shall submit information that the State Board of Health requires, including:

(1) A utilization review plan that includes:

(A) A description of review standards and procedures to be used in evaluating proposed or delivered hospital and medical care; and

(B) The provisions by which patients, physicians, or hospitals may seek reconsideration or appeal of adverse decisions by the private review agent;

(2) The type and qualifications of the personnel either employed or under contract to perform the utilization review;

(3) The procedures and policies to ensure that a representative of the private review agent is reasonably accessible to patients and providers five (5) days a week during normal business hours in this state;

(4) The policies and procedures to ensure that all applicable state and federal laws to protect the confidentiality of individual medical records are followed;

(5) A copy of the materials designed to inform applicable patients and providers of the requirements of the utilization review plan; and

(6) A list of the third party payors for which the private review agent is performing utilization review in this state.

History. Acts 1989, No. 537, § 6.

20-9-910. Expiration of certificate — Renewal.

(a) A certificate expires on the second anniversary of its effective date unless the certificate is renewed for a two-year term as provided in this section.

(b) Before the certificate expires, a certificate may be renewed for an additional two-year term if the applicant:

(1) Otherwise is entitled to the certificate;

(2) Pays the State Board of Health the renewal fee set by the board through regulation; and

(3) Submits to the board:

(A) A renewal application on the form that the board requires; and

(B) Satisfactory evidence of compliance with any requirement of this subchapter for certificate renewal.

History. Acts 1989, No. 537, § 7.

20-9-911. Revocation or denial of certificate.

(a) The State Board of Health may revoke or deny a certificate if the holder does not comply with performance assurances under this section, violates any provision of this subchapter, or violates any regulation adopted pursuant to this subchapter.

(b) The board shall deny a certificate to any applicant if upon review of the application the board finds that the applicant proposing to conduct a utilization review does not:

(1) Have available the services of a sufficient number of qualified medical professionals supported and supervised by appropriate physicians to carry out its utilization review activities;

(2) Meet any applicable regulations the board adopted under this subchapter relating to the qualifications of private review agents or the performance of utilization review; and

(3) Provide assurances satisfactory to the board that:

(A) The procedure and policies of the private review agent will protect the confidentiality of medical records; and

(B) The review agent will be reasonably accessible to patients and providers for five (5) working days a week during normal business hours in this state.

History. Acts 1989, No. 537, § 8.

20-9-912. Appeals.

(a)(1) Before denying or revoking a certificate under this subchapter, the State Board of Health shall provide the applicant or certificate holder with reasonable time to supply additional information demonstrating compliance with the requirements of this subchapter and the opportunity to request a hearing.

(2) If an applicant or certificate holder requests a hearing, the board shall send a hearing notice and conduct a hearing in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b) Any person aggrieved by a final decision of the board in a contested case under this subchapter may take a direct judicial appeal as provided for in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1989, No. 537, §§ 8, 13.

20-9-913. Confidentiality.

A private review agent may not disclose or publish individual medical records or any other confidential medical information obtained in the performance of utilization review activities without the appropriate procedures for protecting the patient's confidentiality. However, nothing in this subchapter shall prohibit private review agents from providing patient information to a third party with whom the private review agent is affiliated, under contract, or acting on behalf of.

History. Acts 1989, No. 537, § 11.

20-9-914. Liability unaffected.

Nothing in this subchapter shall be deemed to reduce or expand the liability of any person or entity for any actions or activities with respect to utilization review.

History. Acts 1989, No. 537, § 17.

SUBCHAPTER 10 — ACUTE STROKE CARE ACT OF 2005

SECTION.

20-9-1001. Title.

20-9-1002. Findings.

20-9-1003. Acute Stroke Care Task Force
— Creation.

SECTION.

20-9-1004. Powers and duties.

20-9-1005. State Board of Health — Pow-
ers and duties.

20-9-1001. Title.

This subchapter shall be known and may be cited as the “Acute Stroke Care Act of 2005”.

History. Acts 2005, No. 663, § 1.

20-9-1002. Findings.

The General Assembly finds that:

(1) The citizens of the State of Arkansas are entitled to the maximum protection which is practicable from the effects of strokes;

(2) Each year about seven hundred thousand (700,000) Americans experience a new or recurrent stroke;

(3) On average, a stroke strikes someone every forty-five (45) seconds, and someone dies of a stroke every three and one-tenth (3.1) minutes;

(4) Stroke is the leading cause of serious, long-term disability in the United States, with about four million seven hundred thousand (4,700,000) stroke survivors alive today;

(5) Stroke is the third leading cause of death in the United States, causing fifty-seven and seven-tenths (57.7) deaths per one hundred thousand (100,000) population; and

(6) In Arkansas, the death rate from stroke is seventy-five and nine-tenths (75.9) per one hundred thousand (100,000), the highest in the nation.

History. Acts 2005, No. 663, § 1.

20-9-1003. Acute Stroke Care Task Force — Creation.

(a) There is created an Acute Stroke Care Task Force to consist of twelve (12) members.

(b) The Director of the Division of Health of the Department of Health and Human Services shall appoint:

(1) One (1) member to represent the Division of Health of the Department of Health and Human Services;

(2) One (1) member to represent the American Heart Association and the American Stroke Association;

(3) One (1) member to represent the Arkansas Minority Health Commission;

(4) One (1) member to represent the Arkansas Hospital Association;

(5) One (1) member to represent the Arkansas Foundation for Medical Care;

(6) One (1) member to represent the College of Public Health of the University of Arkansas for Medical Sciences;

(7) One (1) member to represent the Division of Medical Services of the Department of Health and Human Services;

(8) One (1) member to represent emergency medical services;

(9) One (1) member to represent the Arkansas Medical Society;

(10) One (1) member to represent the medical insurance industry;

(11) One (1) member to represent the community at large; and

(12) One (1) member to represent the Arkansas Medical, Dental, and Pharmaceutical Association.

(c)(1) Except for the initial members, task force members shall serve three-year terms.

(2) The initial members shall be assigned by lot so as to stagger terms to equalize as nearly as possible the number of members to be appointed each year.

(d) If a vacancy occurs, the director shall appoint a person who represents the same constituency as the member being replaced.

(e) The task force shall elect one (1) of its members to act as chair for a term of one (1) year.

(f) A majority of the members shall constitute a quorum for the transaction of business.

(g) The task force shall meet as necessary to further the intent and purpose of this subchapter.

(h) The Division of Health of the Department of Health and Human Services shall provide office space and staff for the task force.

(i) Members of the task force shall serve without pay but may receive expense reimbursement in accordance with § 25-16-902 if funds are available.

History. Acts 2005, No. 663, § 1.

20-9-1004. Powers and duties.

The Acute Stroke Care Task Force shall:

(1) Make recommendations to the State Board of Health consistent with the intent and purpose of this subchapter;

(2) Pursue both public and private funding to further the intent of this subchapter; and

(3) Develop standards and policy recommendations considering, but not limited to, the following:

(A) Methods for raising public awareness of the prevalence and treatment considerations for strokes;

(B) The professional development of emergency medical services professionals to identify victims of potential stroke;

(C) The professional development of emergency room and hospital personnel to identify and treat victims of potential stroke;

(D) Methods for encouraging the use of thrombolytics, clot-busting drugs, or other accepted or emerging treatments, when appropriate;

(E) Methods for ensuring that a comprehensive range of stroke recovery services are available to Arkansans as they recover physical and mental functions affected by a stroke;

(F) Methods for developing stroke treatment centers; and

(G) Methods for developing a stroke registry for Arkansas.

History. Acts 2005, No. 663, § 1.

20-9-1005. State Board of Health — Powers and duties.

The State Board of Health, after consultation with the Acute Stroke Care Task Force and if funds are available, may promulgate rules to further the intent of this subchapter.

History. Acts 2005, No. 663, § 1.

SUBCHAPTER 11 — CERVICAL CANCER CARE ACT OF 2005

SECTION.

20-9-1101. Title.

20-9-1102. Cervical Cancer Task Force—
Creation.

20-9-1103. Cervical Cancer Task Force —
Powers and duties.

SECTION.

20-9-1104. State Board of Health — Pow-
ers and duties.

20-9-1101. Title.

This subchapter shall be known as the “Cervical Cancer Care Act of 2005”.

History. Acts 2005, No. 1414, § 1.

20-9-1102. Cervical Cancer Task Force— Creation.

(a) There is created a Cervical Cancer Task Force to consist of twelve (12) members.

(b) The Director of the Division of Health of the Department of Health and Human Services shall appoint:

(1) One (1) member to represent the Division of Health of the Department of Health and Human Services;

(2) One (1) member to represent the American Cancer Society;

(3) One (1) member to represent the Arkansas Minority Health Commission;

(4) One (1) member to represent the Arkansas Hospital Association;

(5) One (1) member to represent the Arkansas Foundation for Medical Care;

(6) One (1) member to represent the College of Public Health of the University of Arkansas for Medical Sciences;

(7) One (1) member to represent the Division of Medical Services of the Department of Health and Human Services;

(8) One (1) member to represent emergency medical services;

(9) One (1) member to represent the Arkansas Medical Society;

(10) One (1) member to represent the medical insurance industry;

(11) One (1) member to represent the community at large; and

(12) One (1) member to represent the Arkansas Medical, Dental, and Pharmaceutical Association.

(c)(1) Except for the initial members, task force members shall serve three-year terms.

(2) The initial members shall be assigned by lot so as to stagger terms to equalize as nearly as possible the number of members to be appointed each year.

(d) If a vacancy occurs, the director shall appoint a person who represents the same constituency as the member being replaced.

(e) The task force shall elect one (1) of its members to act as chair for a term of one (1) year.

(f) A majority of the members shall constitute a quorum for the transaction of business.

(g) The task force shall meet as necessary to further the intent and purpose of this subchapter.

(h) The Division of Health of the Department of Health and Human Services shall provide meeting space and administrative support for the task force.

(i) Members of the task force shall serve without pay but may receive expense reimbursement in accordance with § 25-16-902 if funds are available.

History. Acts 2005, No. 1414, § 1.

20-9-1103. Cervical Cancer Task Force — Powers and duties.

(a) The Cervical Cancer Task Force shall:

(1) Make recommendations to the Breast Cancer Control Advisory Board consistent with the intent of this subchapter;

(2) Pursue both public and private funding to further the intent of this subchapter; and

(3) Develop standards and policy recommendations considering, but not limited to, the following:

(A) Methods for raising public awareness of the prevalence and treatment considerations for cervical cancer;

(B) The professional development of emergency medical services professionals to identify victims of cervical cancer;

(C) The professional development of emergency room and hospital personnel to identify and treat victims of potential cervical cancer;

(D) Methods for ensuring that a comprehensive range of cervical cancer recovery services is available to women in the State of Arkansas as they recover from the cancer; and

(E) Methods for developing cervical cancer treatment centers.

(b) The Arkansas Central Cancer Registry of the Division of Chronic Disease and Disability Prevention of the Division of Health of the Department of Health and Human Services shall provide an annual cervical cancer report to the task force.

History. Acts 2005, No. 1414, § 1.

20-9-1104. State Board of Health — Powers and duties.

After consultation with the Cervical Cancer Task Force and if funds are available, the State Board of Health may promulgate rules to further the intent of this subchapter.

History. Acts 2005, No. 1414, § 1.

CHAPTER 10

LONG-TERM CARE FACILITIES AND SERVICES

SUBCHAPTER

1. GENERAL PROVISIONS.
2. OFFICE OF LONG-TERM CARE.
3. LONG-TERM CARE FACILITY ADVISORY BOARD.
4. LICENSING OF LONG-TERM CARE FACILITY ADMINISTRATORS.
5. LONG-TERM CARE NETWORK.
6. LONG-TERM CARE OMBUDSMAN ACT.
7. LONG-TERM CARE AIDE TRAINING ACT.
8. HOME HEALTH CARE SERVICES.
9. ARKANSAS LONG-TERM CARE FACILITY RECEIVERSHIP LAW.
10. OMNIBUS LONG-TERM CARE REFORM ACT OF 1988.
11. NURSING HOME LICENSING. [REPEALED.]
12. PROTECTION OF LONG-TERM CARE FACILITY RESIDENTS.
13. NURSING HOME RESIDENT AND EMPLOYEE IMMUNIZATION.
14. STAFFING REQUIREMENTS FOR NURSING FACILITIES AND NURSING HOMES.
15. ALZHEIMER'S SPECIAL CARE STANDARDS ACT.
16. QUALITY ASSURANCE LEVY.
17. ARKANSAS ASSISTED LIVING ACT.
18. LONG-TERM CARE FACILITIES EMERGENCY GENERATOR ACT OF 2001.
19. DISPUTE RESOLUTION FOR LONG-TERM CARE FACILITIES.
20. UNLICENSED LONG-TERM CARE FACILITIES ACT.

A.C.R.C. Notes. References to “this chapter” in §§ 20-10-101, 20-10-203, 20-10-204, and 20-10-2007 might not apply to §§ 20-10-103 — 20-10-108, 20-10-232 — 20-10-234, and 20-10-408 and to

subchapters 6-8 and subchapters 11-17 which were enacted subsequently.

Acts 1995, No. 164, § 3, provided: “Any reference to the Division of Economic and Medical Services, or to the Director or

Deputy Director thereof, contained in Title 20, Chapter 10, of the Arkansas Code of 1987 Annotated, shall be deemed to refer to the Division of Medical Services, or the Director thereof."

This subchapter may be affected by § 20-10-1201 et seq.

RESEARCH REFERENCES

ALR. False imprisonment in connection with confinement in nursing home or hospital. 4 ALR 4th 449.

Mentally disordered patient: Civil liability for physical measures undertaken in connection with treatment. 8 ALR 4th 464.

Judicial power to order discontinuance

of life-sustaining treatment. 48 ALR 4th 67.

Criminal liability under statutes penalizing abuse or neglect of institutionalized infirm. 60 ALR 4th 1153.

Am. Jur. 40A Am. Jur. 2d, Hospitals, §§ 1, 2, 5, 6, 39.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

20-10-101. Definitions.

20-10-102. [Repealed.]

20-10-103. Post-acute head injury treatment facilities.

20-10-104. Photographing prohibited — Exceptions.

20-10-105. Residential care facility — Ineligibility for reimbursement — Exclusions.

20-10-106. Nursing home alternatives — Income eligibility for participation in state funding.

SECTION.

20-10-107. Long-term care facility — Notice of certain incidents.

20-10-108. Quality of dietary management in long-term care facilities.

20-10-109. Findings — Intent.

20-10-110. Protection of residents' personal funds.

20-10-111. Disclosure statement for residential care and assisted living facilities.

Effective Dates. Acts 1969, No. 58, § 17: Jan. 1, 1970.

Acts 1979, No. 28, § 15: Feb. 1, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is a need for an Office of Long Term Care and that the immediate passage of this Act is necessary in order that the reorganization contemplated by this Act may be accomplished on or before July 1, 1979. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 602, § 5: Apr. 4, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that in order to meet the State's responsibility in assuring that head in-

jured individuals are afforded a high quality of services and to further enhance the effective and coordinated regulation of long term care facilities through the functions of the Office of Long Term Care the immediate passage of this Act is necessary. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1988 (4th Ex. Sess.), No. 17, § 6: July 15, 1988. Emergency clause provided: "It is hereby found and determined by the General Assembly that the state lacks procedures to adequately protect the infirmed and frail elderly who reside in long-term care facilities within this state; That this act should go into effect immediately upon passage to shorten the

amount of time required for necessary rules and regulations to be promulgated for implementation of this act and to provide at the earliest possible date some assurance to the residents of long-term care facilities that a high quality of life and the protection of their welfare and health is necessary and important to the entire citizenry of the State of Arkansas. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 1085, § 35: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1991 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1991 could work irreparable harm upon the proper administration and provision

of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991."

Acts 2005, No. 2191, § 11: Apr. 13, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that various long-term care facilities are operating in this state without having obtained a license; that there is no state oversight or protection for the vulnerable residents in these facilities; and that there is no way of ensuring that the facilities properly treat and protect these residents under state long-term care laws. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

20-10-101. Definitions.

As used in this chapter:

(1) "Administrative remedy" means temporary management, denial of payment for all new admissions, transfer of residents, termination or suspension of license, termination of provider agreement, directed plan of correction, directed in-service training, and remedies established by Arkansas law, including remedies provided in § 20-10-1408;

(2) "Administrator-in-training program" means a program for gaining supervised practical experience in long-term care administration;

(3) "Assisted living facility" means the same as in § 20-10-1703;

(4) "Clock hour" means a period of contact experience comprising the full sixty (60) minutes;

(5) "Department" means the Department of Health and Human Services;

(6) "Director" means the Director of the Department of Health and Human Services;

(7) "Division" means the appropriate division as determined by the Director of the Department of Health and Human Services;

(8) "Head injury" means a noncongenital injury to the brain or a neurological impairment caused by illness, accident, or nondegenerative etiology;

(9) "Head injury retraining and rehabilitation" means an individualized program of instruction designed to assist an individual suffering disability as a result of head injury to reduce the adverse effects of the disability and improve functioning in activities of daily living and work-related activities, but which does not include inpatient diagnostic care, and which may be offered in a residential or day program;

(10) "Long-term care facility" means a nursing home, residential care facility, assisted living facility, post-acute head injury retraining and residential care facility, or any other facility which provides long-term medical or personal care;

(11) "Long-term care facility administrator" means a person who administers, manages, supervises, or is in general administrative charge of a long-term care facility whether the individual has an ownership interest in the home and whether his or her functions and duties are shared with one (1) or more individuals;

(12) "Post-acute head injury residential care" means a residential program offering assistance in activities of daily living for individuals who are disabled because of head injury and are therefore unable to live independently;

(13) "Post-acute head injury residential care facility" means a residential care facility which is not a nursing home and which provides head injury retraining and rehabilitation for individuals who are disabled because of head injury and are not in present need of inpatient diagnostic care in a hospital or related institution;

(14) "Reciprocity licensing" means a method by which an individual licensed in good standing in one state may apply for licensure status in another state, provided that the state from which the individual wishes to transfer has standards comparable to the state to which the individual wishes to transfer;

(15) "Residential care facility" means a building or structure which is used or maintained to provide for pay on a twenty-four-hour basis a place of residence and board for three (3) or more individuals whose functional capabilities may have been impaired but who do not require hospital or nursing home care on a daily basis but who could require other assistance in activities of daily living; and

(16) "Sponsor" means legal guardian.

History. Acts 1969, No. 58, § 1; 1975, No. 119, § 1; 1979, No. 28, § 1; 1985, No. 884, § 3; 1985, No. 968, § 3; A.S.A. 1947, §§ 82-2201, 82-2216; Acts 1987, No. 602, §§ 1, 2; 1988 (4th Ex. Sess.), No. 17, § 2; 1993, No. 1090, § 1; 1993, No. 1238, § 4; 2005, No. 898, § 1; 2005, No. 2191, § 2.

Amendments. The 2005 amendment

by No. 898 inserted present (1) and redesignated the remaining subdivisions accordingly.

The 2005 amendment by No. 2191 inserted present (3); inserted "assisted living facility" in present (10); and inserted "Health and" preceding "Human Services" throughout this section.

20-10-102. [Repealed.]

Publisher's Notes. This section, concerning disposition of funds, was repealed

by Acts 1993, No. 1238, § 9. The section was derived from Acts 1969, No. 58, § 14;

1983, No. 738, § 1; A.S.A. 1947, § 82-2214.

20-10-103. Post-acute head injury treatment facilities.

(a) No certificate of need or permit shall be required under any law in connection with facilities offering head injury retraining and rehabilitation.

(b) Post-acute head injury residential facilities shall not be eligible to receive any state Medicare or Medicaid moneys.

History. Acts 1987, No. 602, § 3.

10-204, and 20-10-2007 might not apply to

A.C.R.C. Notes. References to “this chapter” in §§ 20-10-101, 20-10-203, 20-10-204, and 20-10-2007 might not apply to this section which was enacted subsequently.

20-10-104. Photographing prohibited — Exceptions.

(a) Except as provided in subsection (d) or subsection (e) of this section, no resident of a long-term care facility in this state may be photographed without obtaining prior written consent from the resident or, in cases of incapacity, from the resident’s guardian or legal representative.

(b) Consent shall be obtained for each date that photographs are to be taken.

(c) Failure to obtain consent prior to photographing a resident in a long-term care facility shall be a Class B misdemeanor.

(d) Nothing in this section shall be construed to prevent a person licensed under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., from photographing a patient for purposes of medical treatment.

(e)(1) The photographing of residents is prohibited without written consent from the resident or the resident’s legal representative except:

(A) In the course of:

(i) Licensure inspections;

(ii) Medicaid certification;

(iii) A complaint investigation; or

(iv) An investigation of allegations of abuse or neglect of residents or misappropriation of residents’ property; or

(B) In connection with surveys or investigations made pursuant to law conducted by the:

(i) Office of Long-Term Care;

(ii) Office of the Attorney General; or

(iii) United States Department of Health and Human Services.

(2) Under those circumstances, the photographs shall be used only for evidentiary purposes concerning the alleged violations and shall not be released to the media or to the public but shall be made available to the facility if utilized to impose a remedy or to set forth a statement of deficiency.

History. Acts 1989, No. 33, § 2; 1999, No. 709, § 1.

A.C.R.C. Notes. References to “this chapter” in §§ 20-10-101, 20-10-203, 20-

10-204, and 20-10-2007 might not apply to this section which was enacted subsequently.

20-10-105. Residential care facility — Ineligibility for reimbursement — Exclusions.

(a) Any facility that meets the definition of a residential care facility as defined by the Office of Long-Term Care that has not been licensed or certified by the appropriate state agency or has not received a permit of approval from the Health Services Permit Agency shall not be eligible for any reimbursement from state revenues for any services that it offers.

(b) This section does not apply to residential care facilities that have been exempted by law from the permit-of-approval process.

History. Acts 1991, No. 1085, § 25; 1991, No. 922, § 16; 2001, No. 1800, § 15; 2005, No. 2191, § 3.

A.C.R.C. Notes. References to “this chapter” in §§ 20-10-101, 20-10-203, 20-10-204, and 20-10-2007 might not apply to this section which was enacted subsequently.

Amendments. The 2001 amendment inserted “Permit” following “Health Services” in (a) and (b).

The 2005 amendment deleted “prior to January 15, 1991” in (a); and rewrote (b).

20-10-106. Nursing home alternatives — Income eligibility for participation in state funding.

(a) The maximum income eligibility for participation in state funding for nursing home alternatives shall be established at two hundred percent (200%) of the Supplemental Security Income level as provided by law.

(b) This section shall in no way affect the Medicaid program or the Medicaid eligibility or benefits of any person.

History. Acts 1991, No. 1157, §§ 1, 2.

A.C.R.C. Notes. References to “this chapter” in §§ 20-10-101, 20-10-203, 20-

10-204, and 20-10-2007 might not apply to this section which was enacted subsequently.

20-10-107. Long-term care facility — Notice of certain incidents.

(a) As used in this section, “long-term care facility” means “long-term care facility” as defined by § 20-10-213.

(b)(1) Within twenty-four (24) hours after the incident requiring notification occurs, a long-term care facility shall notify by telephone and in writing the legal representative or guardian of a resident of the facility when:

(A) The resident suffers an injury;

(B) The resident is taken outside the facility for medical care;

(C) The resident is moved to a different room; or

(D) There is any significant change in the physical or mental condition of the resident.

(2)(A) Any person who does not comply with this subsection shall be guilty of a violation and upon conviction shall be punished by a fine of one thousand dollars (\$1,000).

(B) The fine shall be deposited into the State Treasury and credited to the Economic and Medical Services Fund Account, there to be used exclusively for the support of the Office of Long-Term Care.

(c)(1) It shall be the responsibility of the long-term care facility to obtain an address and telephone number where the legal representative or guardian is available for notification.

(2) It shall be the responsibility of the legal representative or guardian to notify the long-term care facility of any change in address or telephone number.

History. Acts 1993, No. 1123, §§ 1-4; 2005, No. 1994, § 109.

A.C.R.C. Notes. References to “this chapter” in §§ 20-10-101, 20-10-203, 20-10-204, and 20-10-2007 might not apply to this section which was enacted subsequently.

Amendments. The 2005 amendment substituted “§ 20-10-213” for “§ 20-10-213(4)” in (a); and substituted “violation and upon conviction” for “misdemeanor and” in (b)(2).

20-10-108. Quality of dietary management in long-term care facilities.

(a)(1) Persons responsible for the direction of food services in long-term care facilities having more than fifty (50) beds, at a minimum, shall be:

(A) Certified as a certified dietary manager or food service supervisor; or

(B) Enrolled in a food service supervisors course approved by the Office of Long-Term Care.

(2) Long-term care facilities shall meet the requirements in subdivision (a)(1) of this section within three (3) years from July 30, 1999.

(b)(1) Certified dietary managers or food service supervisors shall be required to complete fifteen (15) hours of continuing education per year.

(2) The continuing education courses shall be offered by the Dietary Managers Association or a comparable body and shall be approved by the office in order for the courses to be counted toward completion of the fifteen (15) hours.

(c) Long-term care facilities having fifty (50) or fewer beds shall allot adequate hours per week for the certified dietary manager or food service supervisor to perform supervisory duties.

History. Acts 1999, No. 1362, §§ 1-3.

A.C.R.C. Notes. References to “this chapter” in §§ 20-10-101, 20-10-203, 20-

10-204, and 20-10-2007 might not apply to this section which was enacted subsequently.

20-10-109. Findings — Intent.

(a) The General Assembly finds that:

(1) Residents in Arkansas' long-term care facilities are particularly vulnerable to the theft or illegal diversion of personal funds designated as residents' share of cost under the Arkansas Medicaid program;

(2) The theft or illegal diversion of residents' share of cost under the Arkansas Medicaid program has an adverse impact on the resources available to ensure high-quality care for all facility residents; and

(3) This section and § 20-10-110 are necessary to:

(A) Protect long-term care residents' rights;

(B) Provide appropriate resources for residents' care; and

(C) Ensure that residents' funds designated to pay for long-term care are used for that purpose.

(b) The General Assembly intends that this section and § 20-10-110 affect individuals who intentionally steal or divert residents' share of cost and not change the obligations or responsibilities of residents of long-term care facilities or deter legitimate disputes over the amount of a resident's share of cost.

History. Acts 2005, No. 1273, § 1.

20-10-110. Protection of residents' personal funds.

(a) As used in this section:

(1) "Agent" means a person who manages, uses, controls, or otherwise has legal access to a resident's income or resources that legally may be used to pay a resident's share of cost or other charges not paid by the Arkansas Medicaid program;

(2) "Long-term care facility" means a nursing home, residential care facility, post-acute head injury retraining and residential care facility, or any other facility that provides long-term medical or personal care;

(3) "Medicaid recipient" means any individual in whose behalf any person claimed or received any payment or payments from the Arkansas Medicaid program; and

(4) "Resident" means a person:

(A) Who resides on a permanent and full-time basis in a long-term care facility;

(B) Who is a Medicaid recipient; and

(C) Whose facility care is paid, in whole or in part, by Medicaid.

(b)(1) No long-term care facility may require a third-party guarantee of payment to the facility as a condition of admission, expedited admission, or continued stay in the facility.

(2) However, a long-term care facility may require an agent who has legal access to a resident's income or resources available to pay for facility care to sign a contract without incurring personal financial liability to provide facility payment from the resident's income or resources.

(c) An agent who guarantees payment under subdivision (b)(2) of this section shall be personally liable to the facility for payment of a resident's share of cost or other charges incurred by the resident if and

to the extent that the agent uses a resident's income or resources for purposes other than the resident's facility care.

(d) Unless otherwise exempted by law or contract, a resident or his or her agent shall pay for the resident's share of cost or other charges not paid for by Medicaid.

(e) If a resident who has not been a Medicaid recipient becomes a Medicaid recipient, the long-term care facility shall make a reasonable attempt to contact the Arkansas Medicaid program to determine the resident's share of cost.

(f)(1) If a resident or his or her agent disputes the amount of share of cost owed to a long-term care facility, the resident or the agent may apply for a hearing under the rules of the Division of Health of the Department of Health and Human Services for a determination of the amount of share of cost owed to the long-term care facility.

(2) The hearing shall be limited to only a determination of the amount of share of cost owed to the long-term care facility and shall not result in a determination that names the person or persons responsible for the payment of that share.

(g) Any agent who knowingly violates this section is guilty of a misdemeanor and shall be punished by a fine not to exceed two thousand five hundred dollars (\$2,500) or by imprisonment not to exceed one hundred eighty (180) days, or both.

History. Acts 2005, No. 1273, § 1.

20-10-111. Disclosure statement for residential care and assisted living facilities.

(a) Each residential care and assisted living facility shall provide each prospective resident or prospective resident's representative with a comprehensive consumer disclosure statement before the prospective resident signs an admission agreement.

(b) The disclosure statement shall include, but not be limited to:

(1) Proof of current licensure through the Office of Long-Term Care;

(2) A list of services provided by the facility, including, but not limited to:

(A) Any medication administration, assistance taking medication, or reminders to take medication that the facility may by law or regulation provide;

(B) Any assistance the facility provides with activities of daily living, such as grooming, toileting, ambulation, and bathing;

(C) The availability of transportation; and

(D) Social activities inside and outside the facility;

(3) Staffing levels or ratios required by law, including, but not limited to, those concerning:

(A) Registered nurses;

(B) Licensed nurses;

(C) Certified nurse's aides or assistants; and

(D) Other staff;

(4) Whether staff members are required to be awake while on duty and, if not, the times when they may be asleep; and

(5) Information regarding the physical plant of the facility, including, but not limited to:

(A) Whether the facility has an emergency generator and, if so, the areas of the facility powered by a generator and the length of time the generator will provide power;

(B) Whether the facility has sprinklers and, if so, the areas of the facility that have sprinklers;

(C) Whether the facility has smoke detectors and, if so, the areas in which smoke detectors are located; and

(D)(i) Whether the facility has an emergency evacuation plan.

(ii) If the facility has an emergency evacuation plan, a copy of the plan shall be provided to each prospective resident or the prospective resident's representative before the signing of an admission agreement.

(c) The facility shall update its disclosure statement no less than annually.

History. Acts 2005, No. 2002, § 1.

SUBCHAPTER 2 — OFFICE OF LONG-TERM CARE

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A.C.R.C. Notes. References to “this subchapter” in §§ 20-10-201 — 20-10-231 may not apply to §§ 20-10-232 — 20-10-234 which were enacted subsequently.

Publisher’s Notes. Acts 1961, No. 414, codified in this subchapter as §§ 20-10-214 — 20-10-228, is also codified as § 20-9-201 et seq.

Effective Dates. Acts 1969, No. 58, § 17: Jan. 1, 1970.

Acts 1971, No. 258, § 5: became law without Governor’s signature, Mar. 9, 1971. Emergency clause provided: “It is found and declared by the General Assembly of Arkansas that Act 414 of 1961, and amendments thereto, does not clearly provide the State Board of Health with the authority to license, inspect and regulate Recuperation Centers, that such intermediate health care facilities are desirable and necessary, and that there is great need for such authority to be clearly and immediately established. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from the date of its passage and approval.”

Acts 1975, No. 190, § 4: Feb. 18, 1975. Emergency clause provided: “It is hereby found and determined by the General Assembly that there is an urgent need in this State for outpatient surgery centers as defined herein to relieve the severe overcrowding of hospital facilities; that such centers will serve an urgent need of the citizens of this State for additional facilities where minor surgery may be performed without the necessity of entering a hospital and incurring the much higher costs of a hospital, and that this Act should be given effect immediately to permit the establishment and operation of such facilities. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1977, No. 536, § 4: Mar. 18, 1977.

Emergency clause provided: “It is hereby found and determined by the General Assembly that there is an urgent need in this State for outpatient psychiatric centers as defined herein to relieve the severe overcrowding of hospital facilities; that such centers will serve an urgent need of the citizens of this State for additional facilities where psychiatric services may be provided without the necessity of entering a hospital and incurring the much higher costs of a hospital, and that this Act should be given effect immediately to permit the establishment and operation of such facilities. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1979, No. 28, § 15: Feb. 1, 1979. Emergency clause provided: “It is hereby found and determined by the General Assembly that there is a need for an Office of Long Term Care and that the immediate passage of this Act is necessary in order that the reorganization contemplated by this Act may be accomplished on or before July 1, 1979. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1981, No. 908, § 3: Mar. 28, 1981. Emergency clause provided: “It is hereby found and determined by the General Assembly that in order to meet the State’s responsibility in assuring that residents in long term care facilities are afforded a high quality of patient care and to further enhance the effective and coordinated regulation of long term care facilities through the functions of the Office of Long Term Care the immediate passage of this Act is necessary. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval.”

Acts 1983, No. 273, § 3: Feb. 25, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the length and variety of billing forms now used by third-party carriers is an important source of administrative expense for hospitals and patients; that hospital cost containment is essential to the health, safety and welfare of the people and should be encouraged; and that a uniform billing form, if implemented without delay, will provide a significant savings in hospital costs in this State. Therefore an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 894, § 5: emergency failed to pass. Emergency clause provided: "It is hereby found and determined by the General Assembly that, in order to meet the State's responsibility in assuring that residents of long term care facilities are afforded a high quality of patient care and to further enhance the effective and coordinated regulation of long term care facilities through the functions of the Office of Long Term Care, the immediate passage of the this Act is necessary. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval." Approved April 13, 1987.

Acts 1988 (4th Ex. Sess.), No. 4, § 6 and No. 14, § 6: July 15, 1988. Emergency clause provided: "It is hereby found and determined by the General Assembly that during recent months, certain inadequacies in the continuum of health care for the older citizens of this State have been brought to the attention of the General Assembly; that this Act is necessary to assure each citizen of this State in need of long-term care that a high quality of care at affordable cost will be provided; that the older citizenry of this State deserve the best possible care; that the immediate passage of this Act is essential to the health, welfare and safety of the citizens of the State of Arkansas and to avoid irreparable harm upon the proper administration of an essential government program. Therefore, an emergency is hereby declared to exist and this act being neces-

sary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1988 (4th Ex. Sess.), No. 16, § 3: July 15, 1988. Emergency clause provided: "It is hereby found and determined by the General Assembly that during recent months, certain inadequacies in the continuum of health care for the older citizens of this State have been brought to the attention of the General Assembly; that this Act is necessary to assure each citizen of this State in need of long-term care that a high quality of care at affordable cost will be provided; that the older citizenry of this State deserve the best possible care; that the immediate passage of this Act is essential to the health, welfare and safety of the citizens of the State of Arkansas and to avoid irreparable harm upon the proper administration of an essential government program. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 636, § 5: Mar. 19, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly of the State of Arkansas that applicants and licensees for long-term care facilities and administrators licenses must now go to Pulaski County Circuit Court in order to appeal decisions of the Office of Long-Term Care and do it within fifteen (15) days of the decision; that this makes it terribly inconvenient and costly for licensees and administrators who must drive long distances to reach Pulaski County and take off days to attend the court hearings; and that these circumstances create an inefficient and inequitable situation which must be corrected immediately. Therefore, in order to alleviate this inefficient system of appeals, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 922, § 28: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly, that the Constitution of the State of Arkansas prohibits

the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1991 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1991 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991."

Acts 1991, No. 1129, § 33: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1991 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1991 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991."

Acts 1997, No. 1025, § 6: Apr. 2, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that this act excludes certain transitional pediatric rehabilitation facilities from the permit of approval process; and that this act is immediately necessary to allow such facilities to proceed without delay. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor

may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 91, § 2: Feb. 6, 2001. Emergency clause provided: "It is found and determined by the General Assembly that maintaining a safe and stable environment for the elderly and infirm is a duty of this State; that the immediate passage and implementation of this act is necessary to protect the health and welfare of the elderly and infirm who are currently being well cared for in private homes and are at imminent risk of being unjustly uprooted from their current residence; and that the mental trauma, disorientation, and possible physical complications that would result from their relocation would cause them to suffer irreparable harm. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2005, No. 2191, § 11: Apr. 13, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that various long-term care facilities are operating in this state without having obtained a license; that there is no state oversight or protection for the vulnerable residents in these facilities; and that there is no way of ensuring that the facilities properly treat and protect these residents under state long-term care laws. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

20-10-201. Legislative intent.

The General Assembly declares that this act is necessary to assure the effective and coordinated regulation of long-term care facilities and long-term care facility administrators within an orderly organizational structure of government at such levels of economy as are consistent with the state's policy of promoting high standards of quality in the services and to eliminate overlapping and duplication of effort.

History. Acts 1979, No. 28, § 2; A.S.A. 1947, § 82-2217.

Publisher's Notes. Acts 1979, No. 28, § 3, provided that it is the intent of the General Assembly to provide for an orderly transfer of powers, duties, and functions relative to the regulation of long-term care facilities and long-term care facility administrators vested in the Department of Health to the Office of Long-

Term Care with a minimum of disruption of governmental services and functions and with a minimum of expense. The section further provided that, towards that end, Acts 1979, No. 28, § 3, should be liberally construed.

Meaning of "this act". Acts 1979, No. 28, codified as §§ 20-10-101, 20-10-201 — 20-10-206, 20-10-208 — 20-10-210, 20-10-301 — 20-10-303.

20-10-202. Creation.

There is created an Office of Long-Term Care within the appropriate division as determined by the Director of the Department of Health and Human Services. The head of the office shall be appointed by the Director of the Department of Health and Human Services.

History. Acts 1979, No. 28, § 4; A.S.A. 1947, § 82-2219.

Publisher's Notes. Acts 1979, No. 28, § 5, provided that the functions, powers, and duties of the Department of Health

[now the Department of Health and Human Services] relating to the regulation of long-term care facilities were transferred to the Office of Long-Term Care.

20-10-203. Powers and duties.

(a) The Office of Long-Term Care is designated as the unit of state government primarily responsible for the inspection, regulation, and licensure of long-term care facilities and the regulation and licensure of long-term care facility administrators.

(b) The office may promulgate such rules and regulations not inconsistent with this chapter as it shall deem necessary or desirable to properly and efficiently carry out the purposes and intent of this chapter.

History. Acts 1969, No. 58, § 13; 1979, No. 28, § 4; A.S.A. 1947, §§ 82-2213, 82-2219.

Publisher's Notes. Acts 1979, No. 28, § 4, provided, in part, that the functions, powers, and duties relating to the regulation of long-term care facilities, vested in the Division of Social Services (which has been abolished), should be assigned to the Office of Long-Term Care. Acts 1979, No.

28, § 5, provided that the functions, powers, and duties relating to the regulation of long-term care facilities exercised by the Department of Health should be transferred to the Office of Long-Term Care and that all functions and responsibilities exercised by the Department of Health should be administered under the direction and supervision of the Office of Long-Term Care.

20-10-204. Notice of violation.

(a) If upon inspection or investigation the Office of Long-Term Care determines that a licensed long-term care facility is in violation of any federal or state law or regulation pertaining to Title XIX Medicaid certification or licensure, the office shall promptly serve by certified mail or other means that gives actual notice, a notice of violation upon the licensee when the violation is a classified violation as described in § 20-10-205.

(b) Each notice of violation shall:

(1) Be prepared in writing;

(2) Specify the:

(A) Exact nature of the classified violation;

(B) Statutory provision or specific rule alleged to have been violated;

(C) Facts and grounds constituting the elements of the classified violation; and

(D) Amount of civil penalty or other administrative remedy, if any, imposed by the Director of the Department of Health and Human Services; and

(3)(A) Inform the licensee of the right to a hearing under § 20-10-208 when administrative remedies or civil penalties are imposed.

(B) Any hearing conducted under this chapter shall conform to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and rules of the Department of Health and Human Services promulgated under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1979, No. 28, § 4; 1981, No. 908, § 1; A.S.A. 1947, § 82-2219; Acts 1987, No. 894, § 3; 1988 (4th Ex. Sess.), No. 4, § 1; 1988 (4th Ex. Sess.), No. 14, § 1; 2005, No. 898, § 2.

Amendments. The 2005 amendment substituted “or other administrative remedy as defined in § 20-10-101, if any, im-

posed” for “if any, assessed” in (b)(1); redesignated former (b)(2) as present (b)(2)(A); inserted “administrative remedies or” in present (b)(2)(A); added (b)(2)(B); and deleted former (c).

U.S. Code. Title XIX referred to in this section is codified as 42 U.S.C. § 1396 et seq.

20-10-205. Classification of violations.

(a) The Office of Long-Term Care shall promulgate rules and regulations specifying classified violations in accordance with this section.

(b) The notice of violation issued to a long-term care facility by the Director of the Office of Long-Term Care shall be classified according to the nature of the violation and shall indicate the classification on the face of the notice as follows:

(1) Class A violations create a condition or occurrence relating to the operation and maintenance of a long-term care facility resulting in death or serious physical harm to a resident or creating a substantial probability that death or serious physical harm to a resident will result therefrom;

(2) Class B violations create a condition or occurrence relating to the operation and maintenance of a long-term care facility which directly threatens the health, safety, or welfare of a resident;

(3) Class C violations shall relate to administrative and reporting requirements that do not directly threaten the health, safety, or welfare of a resident; and

(4)(A) Class D violations shall relate to the timely submittal of statistical and financial reports to the office.

(B) The failure to timely submit a statistical or financial report shall be considered a separate Class D classified violation during any month or part of a month of noncompliance.

(C) In addition to any civil penalty which may be imposed, the director is authorized, after the first month of a Class D violation, to withhold any further reimbursement to the long-term care facility until the statistical and financial report is received by the office.

History. Acts 1979, No. 28, § 4; 1981, 1988 (4th Ex. Sess.), No. 4, § 2; 1988 (4th No. 908, § 1; A.S.A. 1947, § 82-2219; Acts Ex. Sess.), No. 14, § 2.

20-10-206. Civil penalties.

(a)(1) In the case of a Class A violation, the following civil penalties shall be assessed by the Director of the Office of Long-Term Care against the long-term care facility. In Class B, Class C, or Class D violations, the director, in his or her discretion, may assess the following civil penalties or may allow a specified period of time for correction of the violation:

(A)(i) Class A violations are subject to a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for the first violation.

(ii) A second Class A violation occurring within a six-month period shall be subject to a civil penalty of five thousand dollars (\$5,000).

(iii) The third Class A violation occurring within a six-month period from the first violation shall result in proceedings being commenced for termination of the facility's Medicaid agreement and may result in proceedings being commenced for revocation of licensure of the facility;

(B)(i) Class B violations are subject to a civil penalty not to exceed one thousand dollars (\$1,000).

(ii) A second Class B violation occurring within a six-month period shall be subject to a civil penalty of two thousand dollars (\$2,000).

(iii) A third Class B violation occurring within a six-month period from the first violation shall result in proceedings being commenced for termination of the facility's Medicaid agreement and may result in proceedings being commenced for revocation of the licensure of the facility;

(C) Class C violations are subject to a civil penalty to be set by the director in an amount not to exceed five hundred dollars (\$500) for each violation; and

(D) Class D violations are subject to a civil penalty to be set by the director in an amount not to exceed two hundred fifty dollars (\$250) for each violation.

(2) Each subsequent Class C and Class D violation within a six-month period from the last violation shall subject the facility to a civil penalty double that of the preceding violation until a maximum of one thousand dollars (\$1,000) per violation is reached.

(3) In no event may the aggregate fines assessed for violations determined in any one (1) month exceed five thousand dollars (\$5,000).

(b) In determining whether a civil penalty is to be imposed and in fixing the amount of the penalty to be imposed, or if a specified period of time shall be allowed for correction, the following factors shall be considered:

(1) The gravity of the violation, including the probability that death or serious physical harm to a resident will result or has resulted;

(2) The severity and scope of the actual or potential harm;

(3) The extent to which the applicable statutes or regulations were violated;

(4) The "good faith" exercised by the licensee. Indications of good faith include, but are not limited to:

(A) Awareness of the applicable statutes and regulations and reasonable diligence in securing compliance;

(B) Prior accomplishments manifesting the licensee's desire to comply with the requirements;

(C) Efforts to correct; and

(D) Any other mitigating factors in favor of the licensee;

(5) Any relevant previous violations committed by the licensee; and

(6) The financial benefit to the licensee of committing or continuing the violation.

(c) Assessment of a civil penalty provided by this section shall not affect the right of the Office of Long-Term Care to take such other action as may be authorized by law or regulation.

History. Acts 1979, No. 28, § 4; 1981, Sess.), No. 4, § 3; 1988 (4th Ex. Sess.), No. No. 908, § 1; A.S.A. 1947, § 82-2219; Acts 14, § 3. 1987, No. 894, §§ 1, 2; 1988 (4th Ex.

20-10-207. Notification to media of violations.

(a) When the Office of Long-Term Care's appropriate division, as determined by the Director of the Department of Health and Human Services, finds, upon inspection and investigation, that any nursing home or residential care facility has committed two (2) violations constituting Class A or Class B violations as defined in § 20-10-205 during any twelve-month period, the office shall notify the various news media within the county wherein the nursing home or residential care facility is located and shall advise the media that a complete record of the inspection and investigation will be available for public inspection at the office.

(b) However, no information shall be made available which will identify any resident, the family of any resident of the nursing home, the residential care facility, or any person who has filed a complaint against a nursing home or against an administrator or any personnel of a nursing home or residential care facility, except in cases of criminal or civil litigation.

(c) When the office finds, upon inspection and investigation, that any long-term care facility has committed a Class A or Class B violation, following final determination of the matter on administrative appeal, the long-term care facility administrator shall cause copies of the notice of violation as prepared by the office to be posted on the front entry to the facility to be visible from the interior. The notice shall be posted within seven (7) days of the final determination of the matter on administrative appeal and shall remain posted for a period of not less than sixty (60) days.

(d) The notice of violation shall meet the following requirements:

(1) The notice shall read:

(A) "NOTICE

(B) "This facility has been cited with a CLASS A or B VIOLATION.

(C) "Pursuant to § 20-10-205, 'Class A violations create a condition or occurrence relating to the operation and maintenance of a long-term care facility resulting in death or serious physical harm to a resident or creating a substantial probability that death or serious physical harm to a resident will result therefrom. Class B violations create a condition or occurrence relating to the operation and maintenance of a long-term care facility which directly threatens the health, safety, or welfare of a resident.

(D) "Date of violation: _____

(E) "Nature of violation: _____

(F) "Further information can be obtained from the Office of Long-Term Care at (____ number ____).

(G) "This notice shall remain posted for a period not less than 60 days from (date) to (date)."

(2) The notice shall be printed in accordance with the following specifications:

(A) The notice shall be 8½ x 11 inches in size;

(B) The notice shall be printed on a white background;

(C) Subdivision (d)(1)(A) of this section shall be printed in red ink in all capital letters at the top center of the page in 48-point boldface type;

(D) Subdivision (d)(1)(B) of this section shall be printed in black ink in 18-point type, except for the words "CLASS A or CLASS B VIOLATION", which shall be printed in red ink, in capital letters, in 24-point boldface type;

(E) Subdivision (d)(1)(C) of this section shall be printed in black ink with 10-point type. This paragraph shall be indented and boxed;

(F) Subdivisions (d)(1)(D) and (d)(1)(E) of this section shall be underlined and printed in black ink with 18-point type;

(G) Subdivisions (d)(1)(F) and (d)(1)(G) of this section shall be printed in 18-point boldface type; and

(H) The entries to be made shall be written in indelible red ink.

(e) A notice of correction may be posted by the facility administrator upon receipt from the office, provided that the notice does not obscure the notice of violation. Posting of the notice of correction shall not reduce the amount of time required for the posting of the notice of violation set forth in subsection (c) of this section.

(f)(1) The Ombudsman of the Division of Aging and Adult Services of the Department of Health and Human Services shall be furnished with each final copy of a survey upon completion by the office.

(2)(A) The Ombudsman shall prepare a one-page form letter which specifically states whether the facility was found in compliance or out of compliance during the most recent annual survey. In addition, the letter shall include the same information from the previous three (3) annual surveys.

(B) The summary letter shall be considered separately from the survey process and shall not be admissible as evidence in any proceeding by either party in litigation arising from licensure or certification of long-term care facilities.

(C) Copies of the summary letter shall be furnished by the office to the facility administrator and the office of the Attorney General.

(g)(1) A long-term care facility required to be licensed under this subchapter shall post in a conspicuous place, readily accessible to residents and visitors, the final certification survey following final administrative determination as defined by regulation of the statement of deficiencies and plans-of-correction survey report received by the facility.

(2) With the survey report, the facility shall post the summary letter prepared by the Ombudsman.

(3) The survey and letter shall remain posted until the next survey report is received by the facility.

(h) Failure to post a notice of violation as required by subsection (c) of this section shall be considered a Class C violation under § 20-10-205 for which civil penalties set forth in § 20-10-206 may be imposed, with each day of noncompliance constituting a separate offense. Otherwise, the failure to comply with the requirements of this section by a long-term care facility or facility administrator shall be considered a Class C violation under § 20-10-205 for which civil penalties set forth in § 20-10-206 may be imposed.

History. Acts 1983, No. 468, § 1; Ex. Sess., No. 16, § 1; 1999, No. 1539, A.S.A. 1947, § 82-2219.1; Acts 1988 (4th § 3.

20-10-208. Hearings.

(a)(1) A licensee may contest an assessment of a civil penalty or any administrative remedy imposed by the Office of Long-Term Care by

sending a written request for a hearing to the Director of the Department of Health and Human Services.

(2) Requests for hearings shall be received by the Director of the Department of Health and Human Services within sixty (60) days after receipt by the licensee of the notice of violation and the assessment of any civil penalty or any administrative remedy imposed by the office.

(b)(1) The Director of the Department of Health and Human Services shall assign the appeal to a fair and impartial hearing officer who shall not be a full-time employee of the Department of Health and Human Services.

(2) The hearing officer shall preside over the hearing and make findings of fact and conclusions of law in the form of a recommendation to the director.

(3) The Director of the Department of Health and Human Services shall review any recommendation and make the final decision. He or she:

(A) May approve the recommendation; or

(B) May for good cause:

(i) Modify the recommendation in whole or in part; or

(ii)(a) Remand the recommendation for further proceedings as directed by him or her.

(b) If the recommendation is remanded, the hearing officer shall conduct further proceedings as directed by the Director of the Department of Health and Human Services and shall submit an amended recommendation to the Director of the Department of Health and Human Services.

(4) If the Director of the Department of Health and Human Services modifies a recommendation, in whole or in part, or if the Director of the Department of Health and Human Services remands the decision, he or she shall state in writing at the time of the remand or modification all grounds for the remand or modification, including statutory, regulatory, factual, or other grounds.

(5) The modification or approval of a recommendation by the Director of the Department of Health and Human Services shall be the final agency action as provided by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(c)(1)(A) The department shall commence the hearing within forty-five (45) days of receipt of the request for hearing, and the hearing officer shall notify the Director of the Office of Long-Term Care of the date, time, and place of the hearing.

(B) The notification shall be in writing and shall be sent at least twenty (20) days before the hearing date.

(C)(i) The licensee may agree in writing to waive the requirement that the department commence the hearing within forty-five (45) days.

(ii) If the licensee waives the time limit under subdivision (c)(1)(C)(i) of this section, the hearing officer shall commence the hearing at the time agreed to by the parties.

(2) The hearing officer shall issue a recommended decision within ten (10) working days after the close of the hearing, the receipt of the transcript, or the submission of post-trial briefs requested or approved by the hearing officer, whichever is latest.

(3) Unless the Director of the Department of Health and Human Services acts on the recommendation of the hearing officer within sixty (60) days of receipt of the recommendation, the recommendation of the hearing officer shall be final.

(4) Assessments shall be paid to the office within thirty (30) working days of receipt of the notice of violation or within thirty (30) working days of receipt of the final agency action in contested cases, unless the matter has been timely appealed to circuit court.

(5) Facilities failing to pay assessed civil penalties shall be subject to a corresponding reduction in the succeeding Medicaid vendor payment in lieu of nonpayment.

(d) Except to the extent that it is inconsistent with federal law or regulation, a written request for a hearing shall stay until denied by the Director of the Department of Health and Human Services any enforcement action imposed by the office pending the hearing and the final decision of the Director of the Department of Health and Human Services.

(e) Any party subject to appear before a hearing officer may appear and be heard at any proceeding prescribed in this section or may be represented by an attorney or other designated representative, or both.

(f)(1) Upon written request of a licensee, the department shall provide copies of all documents, papers, reports, and other information gathered through inspection or survey that relate to the matter being appealed.

(2) The disclosure shall be made no later than ten (10) working days before a scheduled hearing date or by the date specified by the hearing officer.

(g)(1) At the request of either party, the hearing officer retained by the department may subpoena witnesses and require the production of documentary evidence.

(2) Upon failure of a person without lawful excuse to obey a subpoena or to give testimony, application may be made to the circuit court in the county in which the hearing is to be held for a court order compelling compliance.

History. Acts 1979, No. 28, § 4; 1981, No. 908, § 1; A.S.A. 1947, § 82-2219; Acts 2005, No. 898, § 3.

Amendments. The 2005 amendment rewrote this section.

CASE NOTES

Final Decision.

Although the hearing officer's recommendation was submitted to the deputy director, there was nothing in the record to indicate that the director made any

final determination with respect to the hearing officer's recommendation; this section did not contain a provision for a decision to become final due to inaction. *Waldron Nursing Ctr., Inc. v. Ark. Dep't of*

Human Servs., 82 Ark. App. 268, 105 S.W.3d 781 (2003) (decision under prior law).

20-10-209. Disposition of funds.

There is established on the books of the Treasurer of State, Auditor of State, and the Chief Fiscal Officer of the State a trust fund to be known as the the "Long-Term Care Trust Fund". The fund shall consist of all moneys and interest received from the imposition of civil penalties levied by the state on long-term care facilities found to be out of compliance with the requirements of federal or state law or regulations, there to be administered by the Director of the Department of Health and Human Services solely for the protection of the health or property of residents of long-term care facilities, including, but not limited to, the payment for the costs of relocation of residents to other facilities, maintenance and operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

History. Acts 1979, No. 28, § 4; 1981, 1988 (4th Ex. Sess.), No. 4, § 4; 1988 (4th No. 908, § 1; A.S.A. 1947, § 82-2219; Acts Ex. Sess.), No. 14, § 4.

20-10-210. Information received by Office of Long-Term Care confidential.

(a) Except in cases of civil or criminal litigation or as permitted in subsection (b) of this section, information received by the Office of Long-Term Care, through inspection or otherwise, shall not be disclosed publicly, in administrative appeals or otherwise, in such a manner as to identify long-term care facility residents, their families, or persons filing complaints against a long-term care facility.

(b) Information received or generated by the office, including surveyors' notes, documents, photographs, or other materials gathered, generated, or used by the surveyors in their survey or investigation of a founded complaint, shall be made available to the long-term care facility that is the subject of the survey or investigation upon the completion of the investigation or survey. However, no information that reveals the identity or tends to reveal the identity of any complainant may be disclosed.

History. Acts 1979, No. 28, § 6; A.S.A. 1947, § 82-2221; Acts 1999, No. 1539, § 1; 2001, No. 1774, § 1.

Amendments. The 2001 amendment added "or as permitted in subsection (b) of this section" in present (a); and added (b).

RESEARCH REFERENCES

Ark. L. Rev. Watkins, Access to Public Records Under the Arkansas Freedom of Information Act, 37 Ark. L. Rev. 741.

UALR L.J. Survey of Legislation, 2001 Arkansas General Assembly, Public Health and Welfare, 24 UALR L.J. 557.

20-10-211. Facilities — Regulation of staffing.

(a) The agency responsible for licensure and certification of long-term care facilities shall promulgate appropriate rules and regulations prescribing minimum staffing requirements for all long-term care facilities in the state. The agency shall conform to the requirements of the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and other appropriate state laws in promulgating and placing rules and regulations into effect.

(b) Failure to comply with the rules and regulations promulgated by the appropriate agency pursuant to subsection (a) of this section shall be cause for revocation or suspension of the license or certification of any long-term care facility.

(c)(1) This section shall apply only to licensed nursing homes.

(2) This section shall not be applicable to any facility of the Division of Developmental Disabilities Services of the Department of Health and Human Services or to any other facility operated by the State of Arkansas or any agency of the state.

History. Acts 1979, No. 169, §§ 1-3;
A.S.A. 1947, §§ 82-2223 — 82-2225.

20-10-212. Appeal from denial, suspension, or revocation of license.

(a) Any applicant or licensee who is aggrieved by any decision of the Office of Long-Term Care with respect to the denial, suspension, or revocation of any long-term care facility license or long-term care facility administrator license or other final decision of the office with respect to standards of construction, operation, or maintenance of long-term care facilities or long-term care facility personnel or employees may appeal the decision of the office to the Pulaski County Circuit Court or to the circuit court of any county in which the applicant or licensee resides or does business within thirty (30) days.

(b) Pending determination of the matter on appeal, the status quo of the applicant or licensee shall be preserved.

History. Acts 1969, No. 58, § 12;
A.S.A. 1947, § 82-2212; Acts 1991, No.
636, § 1.

20-10-213. Definitions for §§ 20-10-213 — 20-10-228.

As used in this section and §§ 20-10-214 — 20-10-228:

(1) "Advisory board" means the Long-Term Care Facility Advisory Board;

(2) "Department" means the Department of Health and Human Services;

(3) "Director" means the Director of the Office of Long-Term Care;

(4) "Federal act" means the Hospital Survey and Construction Act, Pub L. No. 79-725, as amended;

(5)(A)(i) "Institution" means a place for the diagnosis, treatment, or care of two (2) or more persons not related to the proprietor suffering from illness, injury, or deformity or where obstetrical care or care of the aged, blind, or disabled is rendered over a period exceeding twenty-four (24) hours.

(ii) "Institution" also includes an outpatient surgery center and an alcohol and drug abuse treatment center.

(B) No establishment operated by the federal government or an agency thereof is within this definition;

(6)(A) "Long-term care facility" means any building, structure, agency, institution, or other place for the reception, accommodation, board, care, or treatment of more than three (3) unrelated individuals who because of age, illness, blindness, disease, or physical or mental infirmity are unable to sufficiently or properly care for themselves and where a charge is made for that reception, accommodation, board, care, or treatment.

(B) "Long-term care facility" shall not include:

(i) The offices of private physicians and surgeons;

(ii) Hospitals;

(iii) Recuperation centers;

(iv) Supervised or supported living apartments, group homes, family homes, or developmental day treatment clinics for individuals with developmental disabilities operated by providers licensed by the Division of Developmental Disabilities Services of the Department of Health and Human Services;

(v) Institutions operated by the federal government;

(vi) Separate living arrangements that do not involve monitoring the activities of the residents while on the premises of the institution or facility to ensure the residents' health, safety, or well-being and that do not involve the institution or facility's being aware of the residents' general whereabouts; or

(vii) Hospices;

(7) "Medical facility" means a diagnostic or diagnostic and treatment center, a rehabilitation facility, or a nursing home as these terms are defined in the federal act, and any other medical facility for which federal aid may be authorized under federal law;

(8) "Office" means the Office of Long-Term Care; and

(9) "Surgeon General" means the Surgeon General of the United States Public Health Service.

History. Acts 1961, No. 414, § 2; 1971, No. 258, § 1; 1975, No. 190, §§ 1, 2; 1977, No. 536, §§ 1, 2; 1985, No. 980, §§ 1, 2; A.S.A. 1947, § 82-328; Acts 1993, No. 909, § 1; 1993, No. 1090, § 2; 1993, No. 1102, § 1; 1997, No. 1028, § 2; 2001, No. 91, § 1; 2001, No. 465, § 1; 2005, No. 2191, § 4.

A.C.R.C. Notes. Acts 1997, No. 1028,

§ 1, provided: "Legislative Findings and Intent. It is the intent of this act to provide for the protection, safety and quality of care of elderly and disabled Arkansans by allowing only long-term care facilities that have been licensed, inspected and regulated by the state to operate."

Publisher's Notes. Acts 1961, No. 414, § 1, provided that Acts 1961, No. 414

(§§ 20-10-213 — 20-10-224), could be cited as the “Division of Hospitals and Nursing Homes Act.”

Amendments. The 2001 amendment by No. 91 in (4)(A), substituted “more than three (3)” for “three (3) or more,” inserted “a charge is made” and deleted “a charge is made” from the end.

The 2005 amendment by No. 465 added (4)(B)(viii).

The 2005 amendment deleted (ii) from present (6)(B) and redesignated accordingly.

U.S. Code. The Hospital Survey and Construction Act referred to in this section has, for the most part, been eliminated from the United States Code. For remaining provisions, see 48 U.S.C. § 1666 and 42 U.S.C. § 291.

RESEARCH REFERENCES

UALR L.J. Survey of Arkansas Law, Insurance, 1 UALR L.J. 210.
Survey of Legislation, 2001 Arkansas General Assembly, Public Health and Welfare, 24 UALR L.J. 557.

CASE NOTES

Cited: *Raney v. Raulston*, 238 Ark. 875, 385 S.W.2d 651 (1965).

20-10-214. Penalties for §§ 20-10-213 — 20-10-228.

(a) Any person, partnership, association, or corporation establishing, conducting, managing, or operating any institution or facility or any combination of separate entities working in concert within the meaning of §§ 20-10-213 — 20-10-228 without first obtaining a license therefor as provided or violating any provision of §§ 20-10-213 — 20-10-228 or regulation lawfully promulgated under §§ 20-10-213 — 20-10-228 shall be guilty of a violation.

(b) Upon conviction, the person, partnership, association, or corporation shall be liable for a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for the first offense nor more than one thousand dollars (\$1,000) for each subsequent offense.

(c) Each day that the institution shall operate after a first conviction shall be considered a subsequent offense.

History. Acts 1961, No. 414, § 27; A.S.A. 1947, § 82-353; Acts 1993, No. 1238, § 5; 2005, No. 1994, § 110.

substituted “violation” for “misdemeanor” in (a); and inserted “partnership, association, or corporation” in (b).

Amendments. The 2005 amendment

20-10-215. Injunction for §§ 20-10-213 — 20-10-228.

The Department of Health and Human Services may sue in the name of the state any person, partnership, association, or corporation in order to enjoin the establishing, conducting, managing, or operating of any institution or facility, or any combination of separate entities working in concert within the meaning of §§ 20-10-213 — 20-10-228, without the person’s first having secured a license therefor.

History. Acts 1961, No. 414, § 26; A.S.A. 1947, § 82-352; Acts 1993, No. 1238, § 6.

20-10-216. Powers and duties of the Department of Health and Human Services.

(a) In carrying out §§ 20-10-213 — 20-10-228, the Department of Health and Human Services is empowered and directed to:

(1) Require such reports, make such inspections and investigations, and prescribe and enforce such reasonable rules and regulations as it finds necessary to effectuate §§ 20-10-213 — 20-10-228;

(2) Provide methods of administration and appoint a director and other personnel of the department;

(3) Procure and pay for the temporary services of experts or consultants on a fee-for-service basis;

(4) Enter into agreements for the utilization of the facilities and services of other departments, agencies, and institutions, public and private;

(5) Accept on behalf of the state and deposit with the Treasurer of State any grant, gift, or contribution of funds made to assist in meeting the cost of carrying out §§ 20-10-213 — 20-10-228 and expend such funds accordingly;

(6) Make an annual report to the Governor on activities and expenditures made pursuant to §§ 20-10-213 — 20-10-228;

(7) Procure the services of an attorney to assist the department in any legal work involved in carrying out the duties of the department and pay for the services on a fee-for-service or retainer basis; and

(8) Accept a certificate made by an individual's physician that the individual is in need of nursing home care or that he or she can provide for himself or herself.

(b) The department shall adopt, promulgate, and enforce such rules, regulations, and standards as may be necessary for the accomplishment of §§ 20-10-213 — 20-10-228. The rules, regulations, and standards shall be modified, amended, or rescinded by the department as may be in the public interest.

History. Acts 1961, No. 414, §§ 4, 28; 1983, No. 273, § 1; A.S.A. 1947, §§ 82-330, 82-354; Acts 2005, No. 2191, § 5.

Amendments. The 2005 amendment,

in (a)(8), inserted "or she" and "or herself" and deleted "in a boarding home" from the end.

20-10-217. Construction program — Survey and planning activities.

(a) The Department of Health and Human Services is empowered and directed to make an inventory of existing medical facilities including public, nonprofit, and proprietary medical facilities, survey the need for construction of medical facilities, and, on the basis of the inventory and survey, develop a program for the construction of such public and other nonprofit medical facilities as will, in conjunction with existing

facilities, afford the necessary physical facilities for furnishing adequate medical facility services to the people of the state in accordance with the regulations prescribed by the federal act.

(b) The construction program shall provide, in accordance with regulations prescribed by the federal act, for adequate medical facilities for the people of the state, and insofar as possible shall provide for their distribution throughout the state in such manner as to make all types of medical facility services reasonably accessible to all persons in the state.

History. Acts 1961, No. 414, §§ 9, 10;
A.S.A. 1947, §§ 82-335, 82-336.

CASE NOTES

Cited: Raney v. Raulston, 238 Ark. 875,
385 S.W.2d 651 (1965).

20-10-218. Construction program — Federal funds for surveying and planning.

(a) The Department of Health and Human Services may make application to the Surgeon General for, and to receive, federal funds to assist in carrying out the survey and planning activities provided for in § 20-10-217.

(b) The funds shall be deposited with the Treasurer of State as a trust fund designated "Hospital and Medical Facility Survey and Planning Fund", which shall be kept separate and apart from all public funds of the state and shall be available to the department for expenditure in carrying out the survey and planning activities provided.

(c) Any funds received and not expended for such purposes shall be repaid to the United States Treasury.

(d) Warrants for all payments from the fund shall bear the signature of the Director of the Department of Health and Human Services or his or her agent.

History. Acts 1961, No. 414, § 11;
A.S.A. 1947, § 82-337.

20-10-219. Construction program — State plan.

(a)(1) The Department of Health and Human Services shall prepare and submit to the Surgeon General a state plan which shall include the medical facilities construction program developed as provided in this subchapter. The plan shall provide for the establishment, administration, and operation of medical facilities construction activities in accordance with the requirements of the federal act and regulations under the federal act.

(2) The state plan shall also set forth the relative need for the several projects included in the construction program determined in accordance

with regulations prescribed by the federal act and provide for the construction, insofar as financial resources available for construction and for maintenance and operation permit, in the order of relative need.

(b) Prior to the submission of the plan to the Surgeon General, the department shall give adequate publicity to a general description of all the provisions proposed to be included therein and hold a public hearing at which all persons or organizations with a legitimate interest in the plan may be given an opportunity to express their views.

(c) After approval of the plan by the Surgeon General, the department shall cause to be published a general description of the provisions thereof in at least one (1) newspaper having general circulation in each county in the state and shall make the plan, or a copy thereof, available upon request to all interested persons or organizations.

(d) The department shall review the construction program, submit to the Surgeon General any modifications of the program which it may find necessary, and may submit to the Surgeon General modifications of the state plan not inconsistent with the requirements of the federal act.

History. Acts 1961, No. 414, §§ 12, 14;
A.S.A. 1947, §§ 82-338, 82-340.

20-10-220. Construction program — Application for funds.

(a) Applications for medical facilities construction projects for which federal funds are requested shall be submitted to the Department of Health and Human Services and may be submitted by the state or any political subdivision thereof or by any public or other nonprofit agency authorized to construct and operate a medical facility.

(b) However, no application for a diagnostic or treatment center shall be approved unless the applicant is:

(1) The state, a political subdivision, or a public agency; or

(2) A person, corporation, or association which owns and operates a nonprofit hospital.

(c) Each application for a construction project shall conform to federal and state requirements.

(d) If after affording reasonable opportunity for development and presentation of applications in the order of relative need the department finds that a project application complies with the requirements of subsection (a) of this section and is otherwise in conformity with the state plan, then it shall approve the application and shall recommend and forward it to the Surgeon General.

(e) The department by regulation shall provide an opportunity for fair hearing and appeal to every applicant who is dissatisfied with any action regarding an application.

History. Acts 1961, No. 414, §§ 15, 16;
A.S.A. 1947, §§ 82-341, 82-342.

20-10-221. Construction program — Payment of installments.

The Department of Health and Human Services shall cause to be inspected each construction project approved by the Surgeon General. If the inspection warrants, the department shall certify to the Surgeon General that work has been performed upon the project or that purchases have been made in accordance with the approved plans and specifications and that payment of an installment of federal funds is due to the applicant.

History. Acts 1961, No. 414, § 17;
A.S.A. 1947, § 82-343.

20-10-222. Construction program — Federal funds.

(a) The Department of Health and Human Services is empowered to receive federal funds in behalf of and transmit them to such applicants.

(b) Money received from the federal government for a construction project shall be deposited with the Treasurer of State as a trust fund designated "Hospital and Medical Facilities Construction Fund". The fund shall be separate and apart from all public funds of the state and shall be used solely for payments due to applicants for work performed or purchases made in carrying out approved projects.

(c) Warrants for all payments from the fund shall bear the signature of the Director of the Office of Long-Term Care or his or her agent.

(d) The procedure provided in this section for the receipt and disbursement of such funds is not intended to deprive any applicant from receiving federal payments directly if, for any reason, the department or the Treasurer of State is not authorized to receive and transmit federal payments for certain construction projects to certain applicants.

History. Acts 1961, No. 414, § 18; Medical Facilities Construction Fund, referred to in this section, no longer exists.
A.S.A. 1947, § 82-344.

Publisher's Notes. The Hospital and See title 19, chapters 5 and 6.

20-10-223. Minimum standards for institutions.

(a) The Department of Health and Human Services shall require institutions as defined in § 20-10-213 which receive federal aid for construction under the state plan to comply with such minimum standards prescribed by the department as may be promulgated in accordance with the federal act and federal rules and regulations.

(b) An institution, or the governing body thereof, shall comply with such minimum standards as may be prescribed by the department under the authority of this section even though federal aid may not be sought or received under §§ 20-10-213 — 20-10-228.

History. Acts 1961, No. 414, § 13;
A.S.A. 1947, § 82-339.

20-10-224. License required — Administration by Department of Health and Human Services.

(a) No long-term care facility or related institution shall be established, conducted, or maintained in this state without obtaining a license.

(b)(1) By properly promulgating rules and regulations, the Department of Health and Human Services may provide for the issuance of provisional long-term care facility licenses and long-term care facility licenses, including the licensure of facilities with specialized wings, units, or rooms for dementia residents, those suffering from Alzheimer's disease, and other related conditions.

(2) The licenses shall be effective on a state fiscal year basis and shall expire June 30 of each year, subject to revocation and to annual renewal.

(3)(A) If issued, a provisional license shall be effective upon submission of the application for licensure to the Office of Long-Term Care.

(B) The provisional license shall remain in effect until the issuance of the long-term care facility license.

(c)(1) Applicants for long-term care facility licensure shall file applications under oath with the Office of Long-Term Care.

(2) Applications shall be signed by the administrator or the owner of the facility.

(3) Applications shall set forth the full name and address of the facility for which licensure is sought and additional information as the office may require, including affirmative evidence of ability to comply with standards, rules, and regulations as may be lawfully prescribed.

(d) No license shall be issued or renewed for any long-term care facility unless the applicant has included in the application the name and such other information required for licensure and disclosure. This requirement, as well as any other requirement determined appropriate by the department, shall be in accordance with the guidelines provided by the department.

(e)(1) Whenever ownership of controlling interest in the operation of a facility is sold by the person or persons named in the license to any other person or persons, the buyer shall obtain a license to operate the facility. The buyer shall notify the department of the sale and apply for a license at least thirty (30) days prior to the completed sale.

(2) Except as provided by the Arkansas Long-Term Care Facility Receivership Law, § 20-10-901 et seq., the seller shall notify the department at least thirty (30) days prior to the completed sale. The seller shall remain responsible for the operation of the facility until such time as a license is issued to the buyer.

(3) The buyer shall be subject to any plan of correction submitted by the previous licensee and approved by the department.

(4) The seller shall remain liable for all penalties assessed against the facility which are imposed for violations or deficiencies occurring prior to sale of ownership or operational control.

(5) Before approval of the application for licensure of the buyer, the department shall consider and may deny a license based upon the following:

(A) Whether the administrator, officers, directors, or partners have ever been convicted of a felony;

(B) Whether, within twelve (12) months prior to the license application, any facility or facilities owned or operated by the applicant or applicants have been found, after final administrative decision, to have committed a Class A long-term care violation;

(C) Whether during the three (3) years prior to the application the applicant or applicants have had a license revoked; or

(D) Whether the applicant or applicants have demonstrated to the satisfaction of the department that any other facility owned, operated, or administered by the applicant or applicants has been in substantial compliance with the standards as set by applicable state and federal law for the previous twelve-month period prior to application for licensure.

(f)(1) Before issuing a license, or approving the operation of any long-term care facility which was not licensed at the time of application or any additional bed capacity of a licensed facility, the department shall consider and may deny a license based upon the criteria established in subdivision (e)(5) of this section.

(2) This subsection is not intended to circumvent or alter the requirements set forth in § 20-8-101 et seq.

(g) Except for facilities operated by the State of Arkansas, each long-term care facility shall pay an annual licensure fee in the following amount:

(1) Residential care facilities shall pay an annual fee determined by multiplying five dollars (\$5.00) by the total number of licensed resident beds;

(2) Adult day care and adult day health care facilities shall pay an annual fee determined by multiplying five dollars (\$5.00) by the maximum number of persons the facility can serve; and

(3) All other long-term care facilities shall pay an annual fee determined by multiplying ten dollars (\$10.00) by the total licensed resident beds or maximum licensed client population.

(h) Annual licensure fees shall be tendered with each application for a new long-term care facility license and with each long-term care facility license renewal application.

(i) Annual licensure fees are payable in one (1) sum. Fees for new licensure applications may be prorated by dividing the total fee by three hundred sixty-five (365) and multiplying the quotient, that is, the result, by the number of days from the date the application is approved through June 30, inclusive. Applications for licensure renewal shall be delivered, or if mailed shall be postmarked, on or before June 1.

(j) Any fee not paid when due shall be delinquent and shall be subject to assessment of a ten percent (10%) penalty.

(k) No license or licensure renewal shall be issued unless the annual licensure fee has been paid in full.

(l) Licenses shall be issued only for the premises and persons named in the application and shall not be transferable.

(m) All funds derived from fees collected pursuant to §§ 20-10-213 — 20-10-228 shall be deposited into the State Treasury and credited to the Division of Economic and Medical Services Administrative Fund to be used for the maintenance and operation of the long-term care facility licensure program.

History. Acts 1961, No. 414, § 19; 1965, No. 434, § 1; 1971, No. 258, § 2; A.S.A. 1947, § 82-345; Acts 1989, No. 485, § 1; 1989, No. 665, § 1; 1993, No. 1238, §§ 1-3; 1999, No. 1181, § 10; 2005, No. 656, § 1.

Amendments. The 2005 amendment inserted "provisional long-term care facility licenses and" in (b)(1); and added (b)(3).

20-10-225. Alterations, additions, and new construction of facilities.

(a) The Department of Health and Human Services shall prescribe by regulation that any licensee or applicant desiring to make specified types of alterations or additions to its facilities or to construct new facilities shall, before commencing such alterations, additions, or new construction, submit plans and specifications for them to the department for preliminary inspection and approval or recommendations with respect to compliance with the regulations and standards.

(b) From time to time, the Director of the Division of Health of the Department of Health and Human Services or his or her agent shall inspect each construction project approved by the Surgeon General. If the inspection so warrants, the director or his or her agent shall certify to the Surgeon General that work has been performed upon the project, or purchases have been made, in accordance with the approved plans and specifications, and that payment of an installment of federal funds is due to the applicant.

History. Acts 1961, No. 414, § 21; A.S.A. 1947, § 82-347; Acts 1987, No. 143, § 3.

Publisher's Notes. Acts 1987, No. 143, § 3, is also codified as § 20-9-217.

CASE NOTES

Nursing Home Applicants.

The Department of Human Services regulates any applicant or licensee that desires to make alterations or additions to existing facilities or the construction of new facilities, and an applicant must submit plans for such altered, expanded or new facility before construction is com-

menced, without exception for nursing home applicants submitting requests under Acts 1987, No. 593, which created exemptions from certain certificate of need and permit requirements. *Arkansas Dep't of Human Servs. v. Hillsboro Manor Nursing Home, Inc.*, 304 Ark. 476, 803 S.W.2d 891 (1991).

20-10-226. Inspections of facilities.

The Department of Health and Human Services shall make such inspections as it may prescribe by regulation.

History. Acts 1961, No. 414, § 21; A.S.A. 1947, § 82-347.

20-10-227. Annual report.

The Department of Health and Human Services shall make an annual report of its activities and operations under §§ 20-10-213 — 20-10-228 to the Governor and shall make such information available to the General Assembly as may be requested.

History. Acts 1961, No. 414, § 24; A.S.A. 1947, § 82-350.

20-10-228. Information received by Department of Health and Human Services confidential.

(a) Except in a proceeding involving the question of licensing or revocation of a license or as permitted in § 20-10-210(b), information received by the Department of Health and Human Services, through inspection or otherwise, authorized under §§ 20-10-213 — 20-10-228, shall not be disclosed publicly in such a manner as to identify long-term care facility residents, their families, or persons filing complaints.

(b)(1) However, in the case of a specific written request by the deputy director of the appropriate division as determined by the Director of the Department of Health and Human Services for information concerning a certain long-term care facility, information obtained during recent inspections of the facility may be supplied in writing to the deputy director.

(2) This exception applies only to facilities providing care for recipients of public welfare and is not to be construed as permitting the exchange of such information on all homes in the state but is specifically limited to those for which the appropriate division as determined by the director has specific complaints.

(3) These complaints shall be forwarded to the department along with the request for information from the deputy director.

(4) Information received by the deputy director in the manner prescribed in this subsection shall not be disclosed.

History. Acts 1961, No. 414, § 23; 1965, No. 434, § 2; A.S.A. 1947, § 82-349; Acts 1999, No. 1539, § 2; 2001, No. 1774, § 2.

Amendments. The 2001 amendment

added “or as permitted in § 20-10-210(b)” in (a); and, in (b), redesignated the former introductory language as present (b)(1) and redesignated the remaining subsections accordingly.

RESEARCH REFERENCES

Ark. L. Rev. Watkins, Access to Public Records Under the Arkansas Freedom of Information Act, 37 Ark. L. Rev. 741.

UALR L.J. Survey of Legislation, 2001 Arkansas General Assembly, Public Health and Welfare, 24 UALR L.J. 557.

20-10-229. Annual disclosure statement — Requirement.

(a) Any person, corporation, partnership, or facility seeking a license or renewal to provide long-term care in this state shall furnish a current annual disclosure statement to all residents upon request or to all prospective residents upon request.

(b) The statement shall be filed along with the annual application for licensure during July of each year.

(c) The statement shall be on forms and in a format as prescribed by the Department of Health and Human Services and shall include the following information:

(1) The name and business address of the facility and a statement as to whether the facility is a partnership, corporation, or other type of legal entity;

(2) The names and business addresses of the officers, directors, trustees, managing or general partners, or any persons having a five percent (5%) or greater equity or beneficial interest in or of the facility and a description of each person's interest in or occupation with the facility;

(3) A statement as to whether the facility, or any of its officers, directors, trustees, partners, or administrators, prior to the date of application:

(A) Has ever been convicted of Medicare or Medicaid fraud or felony;

(B) Has ever been convicted of fraud, embezzlement, fraudulent conversion, or misappropriation of property; or

(C) Has had final administrative judgment on any Class A or Class B long-term care violations within the last two (2) years;

(4) The location and description of the physical property or property of the facility;

(5) The disclosure statement shall clearly state which services are included in basic care contracts for long-term care and which services are available at or by the facility at extra charge; and

(6) A copy of the contract used by the facility.

History. Acts 1989, No. 664, § 1.

20-10-230. Annual disclosure statement — Filing.

Each facility shall file the completed annual disclosure statement along with its annual license application during July of each year and file a copy of the disclosure statement with the Department of Health and Human Services county office in the county in which the facility is located.

History. Acts 1989, No. 664, § 1.

20-10-231. Annual disclosure statement — Violations.

The failure to provide to any resident a copy of the disclosure statement upon request or to a prospective resident upon request or the failure of any facility to disclose the required information in a timely manner or the failure to file the disclosure statement as required shall be grounds for a Class C violation, pursuant to § 20-10-205.

History. Acts 1989, No. 664, § 1.

20-10-232. Regulations, client rights, and sanctions.

(a) The Office of Long-Term Care shall promulgate and maintain pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., separate regulations, client rights, and sanctions for intermediate care facilities for the mentally retarded operations and for other long-term care facilities regulated by the office.

(b) Regulations which cover all facilities regulated by the office shall be included in each separate set of regulations. Changes and updates to each set of regulations shall specify which type of regulations are being updated or changed.

History. Acts 1991, No. 922, § 19; 1991, No. 1129, § 25.

A.C.R.C. Notes. References to “this chapter” in §§ 20-10-101, 20-10-203, 20-10-204, and 20-10-2007 might not apply to this section which was enacted subsequently.

References to “this subchapter” in §§ 20-10-201 — 20-10-231 might not apply to this section which was enacted subsequently.

20-10-233. Oversight subcommittees.

(a) The operation of the community-based intermediate care facility for the mentally retarded program shall be subject to the oversight of a five-member subcommittee composed of three (3) members of the House of Representatives appointed by the Speaker of the House of Representatives and two (2) members of the Senate appointed by the President Pro Tempore of the Senate.

(b) The subcommittee shall provide oversight for the operation of the small intermediate care facility for the mentally retarded program and make recommendations, within the appropriate federal regulations and guidelines, to the Division of Developmental Disabilities Services of the Department of Health and Human Services and the Office of Long-Term Care to establish and clarify the mission, goals, levels of services, and scope of the program and to provide consistency in state regulations, guidelines, standards, and policies.

(c) The subcommittee shall also make recommendations for adequate funding to ensure the fiscal integrity of the program in order to allow it to be operated pursuant to the state and federal regulations, guidelines, standards, and policies.

History. Acts 1991, No. 922, § 20; 1991, No. 1129, § 26.

A.C.R.C. Notes. References to “this chapter” in §§ 20-10-101, 20-10-203, 20-10-204, and 20-10-2007 might not apply to this section which was enacted subsequently.

References to “this subchapter” in §§ 20-10-201 — 20-10-231 might not apply to this section which was enacted subsequently.

Publisher’s Notes. Acts 1991, No. 922, § 20 and No. 1129, § 26, are also codified as § 20-48-104.

20-10-234. Relicensing bed capacity.

A long-term care facility that reduced its licensed bed capacity within the past forty (40) months from April 2, 1997, may relicense those beds by paying the license fees applicable for that period of time.

History. Acts 1997, No. 1025, § 2.

A.C.R.C. Notes. References to “this chapter” in §§ 20-10-101, 20-10-203, 20-10-204, and 20-10-2007 might not apply to this section which was enacted subsequently.

References to “this subchapter” in §§ 20-10-201 — 20-10-231 might not apply to this section which was enacted subsequently.

SUBCHAPTER 3 — LONG-TERM CARE FACILITY ADVISORY BOARD

SECTION.

20-10-301. Creation — Members.

20-10-302. Meetings.

SECTION.

20-10-303. [Repealed.]

Effective Dates. Acts 1969, No. 58, § 17: Jan. 1, 1970.

Acts 1979, No. 28, § 15: Feb. 1, 1979. Emergency clause provided: “It is hereby found and determined by the General Assembly that there is a need for an Office of Long Term Care and that the immediate passage of this Act is necessary in order that the reorganization contemplated by this Act may be accomplished on or before July 1, 1979. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1987, No. 981, § 3: Apr. 14, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that the immediate establishment of an impartial hearing officer for appeals from agency decisions in the field of Long Term Care is necessary to preserve the public health, welfare, and safety. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health, and safety, shall be in full

force and effect from and after its passage and approval.”

Acts 1988 (4th Ex. Sess.), No. 18, § 4: July 15, 1988. Emergency clause provided: “It is hereby found and determined by the General Assembly that during recent months, certain inadequacies in the continuum of health care for the older citizens of this State have been brought to the attention of the General Assembly; that this Act is necessary to assure each citizen of this State in need of long-term care that a high quality of care at affordable cost will be provided; that the older citizenry of this State deserve the best possible care; that the immediate passage of this Act is essential to the health, welfare and safety of the citizens of the State of Arkansas and to avoid irreparable harm upon the proper administration of an essential government program. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: “It is

hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for

the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

20-10-301. Creation — Members.

(a)(1) There is created the Long-Term Care Facility Advisory Board composed of ten (10) members selected as follows:

(A) One (1) member appointed by the Governor from the public at large;

(B) Two (2) members appointed by the Governor who shall be owners or administrators of long-term care nursing facilities selected from a list of nominees prepared by the Arkansas Health Care Association;

(C) One (1) member appointed by the Governor who shall be a doctor of medicine nominated by the Arkansas Medical Society;

(D) One (1) member appointed by the Governor who shall be a registered nurse with experience in geriatric nursing from a list provided by the Gerontological Council of the Arkansas State Nurses Association;

(E) One (1) member who shall be the deputy director of the appropriate division as determined by the Director of the Department of Health and Human Services or his or her appointed representative;

(F) One (1) member who shall be over sixty (60) years of age and represent the elderly. This person shall not be actively engaged in or retired from any occupation, profession, or industry to be regulated by the board. The member shall be appointed by the Governor from the state at large and subject to confirmation by the Senate;

(G) One (1) member who shall be the Director of the Division of Health of the Department of Health and Human Services or his or her appointed representative;

(H) One (1) member appointed by the Governor who shall be a provider licensed by the Office of Long-Term Care to provide residential care or adult day-care services; and

(I) One (1) member from the Arkansas Association of Area Agencies on Aging, Inc., selected by the Governor.

(2) All members shall be appointed after consultation with the appropriate professional societies.

(3) The deputy director of the appropriate division as determined by the Director of the Department of Health and Human Services shall be

an ex officio member and chair of the board, voting only in case of a tie vote.

(4) Only a member appointed under subdivision (a)(1)(B) of this section may have a financial interest in, be retired from, or be employed by any long-term care facility. However, a provider licensed by the Office of Long-Term Care appointed under subdivision (a)(1)(H) of this section shall not have a financial interest in, be retired from, or employed by any nursing home. The person appointed pursuant to subdivision (a)(1)(D) of this section may be employed by a nursing home.

(b) All members shall be appointed for terms of three (3) years.

(c) Vacancies on the board from death, resignations, or otherwise shall be filled by appointment of the Governor to fill the unexpired term that had been created.

(d) Each member may receive expense reimbursement in accordance with § 25-16-901 et seq.

(e) The board shall elect from its membership a vice chair and a secretary-treasurer and shall adopt rules to govern its proceedings.

History. Acts 1969, No. 58, §§ 8-10; 1979, No. 28, §§ 7, 8; 1985, No. 884, § 1; 1985, No. 968, § 1; A.S.A. 1947, §§ 6-623 — 6-626, 82-2208 — 82-2210; Acts 1988 (4th Ex. Sess.), No. 18, § 1; 1997, No. 250, § 181.

Publisher's Notes. Acts 1979, No. 28, § 10, provided that any act or part thereof making specific reference to the Nursing Home Advisory Council should be applicable to the Long-Term Care Facility Advisory Board.

Acts 1985, No. 884, § 1 provided, in part, that the ten members initially appointed would draw lots to determine

their respective terms. Three members would serve for one year; four members would serve for two years; and three members would serve for three years.

Acts 1988 (4th Ex. Sess.), No. 18, § 2, provided that current members of the Long-Term Care Advisory Facility Board who fail to meet the requirements set forth in this section may serve out the remainder of their term but shall not be eligible for reappointment.

U.S. Code. Title XIX of the federal Social Security Act of 1935 referred to in this section is codified as 42 U.S.C. § 1396 et seq.

20-10-302. Meetings.

The Long-Term Care Facility Advisory Board shall meet at least one (1) time every three (3) months and may meet more often if meetings are called by the chair or by a majority of the board members and if all members of the board are notified.

History. Acts 1969, No. 58, § 11; 1979, No. 28, § 9; 1985, No. 884, § 2; 1985, No. 968, § 2; A.S.A. 1947, § 82-2211.

20-10-303. [Repealed.]

Publisher's Notes. This section, concerning the authority of the Long-Term Care Facility Advisory Board to hear ap-

peals, was repealed by Acts 2005, No. 898, § 4. The section was derived from Acts 1969, No. 58, § 11; 1979, No. 28, § 9;

1985, No. 884, § 2; 1985, No. 968, § 2;
A.S.A. 1947, § 82-2211; Acts 1987, No.
981, § 1.

SUBCHAPTER 4 — LICENSING OF LONG-TERM CARE FACILITY ADMINISTRATORS

SECTION.

20-10-401. Penalty.
20-10-402. License required.
20-10-403. Qualifications.
20-10-404. Application and fees.
20-10-405. Renewal.

SECTION.

20-10-406. Reciprocity.
20-10-407. Denial, revocation, or suspen-
sion.
20-10-408. Disposition of funds.

A.C.R.C. Notes. References to “this subchapter” in §§ 20-10-401 — 20-10-407 might not apply to § 20-10-408 which was enacted subsequently.

Effective Dates. Acts 1969, No. 58, § 17; Jan. 1, 1970.

Acts 1971, No. 721, § 4; Apr. 28, 1971. Emergency clause provided: “It is hereby found and determined by the General Assembly that the present laws of this State relating to the licensing of nursing home administrators are in need of immediate revision in order to clarify such laws and

to assure that only competent and qualified persons are licensed as nursing home administrators in this State; that this Act is designed to accomplish these purposes and to thereby assure the citizens of this State that nursing home administrators in this State are competent and qualified for the position they hold. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

RESEARCH REFERENCES

ALR. Licensing and regulation of nursing and rest homes. 53 ALR 4th 689.

Am. Jur. 40A Am. Jur. 2d, Hospitals, §§ 5, 6.

20-10-401. Penalty.

(a) Any person, partnership, association, or corporation establishing, conducting, managing, or operating any long-term care facility without first obtaining a license as provided by law shall be guilty of a Class A misdemeanor and upon conviction shall be liable to a fine imposed pursuant to a Class A misdemeanor.

(b) Each day that a long-term care facility shall operate after a first conviction shall be considered a Class D felony and upon conviction shall be liable to a fine imposed pursuant to a Class D felony.

History. Acts 1985, No. 884, § 4; 1985, No. 968, § 4; A.S.A. 1947, § 82-2234.

A.C.R.C. Notes. Acts 1987, No. 714, § 1, amended Acts 1985, No. 986, § 4, which is codified in this section. However Acts 1987, No. 714, § 2, provided: “Section 20 of Act 414 of 1961 and Section 4 of Act 884 of 1985 are hereby repealed and

this act shall terminate June 30, 1989.” The effect of this provision on this section, in which Acts 1985, No. 884, § 4, is also codified, is unclear. The amendment by the 1987 act reads: “(A) Applicants for nursing home licensure, excepting nursing homes operated by or affiliated with Life Care/Continuing Care facilities, shall

file applications under oath with the Office of Long Term Care of the Division of Economic and Medical Services of the Department of Human Services upon forms prescribed by the Office of Long Term Care, and effective July 1, 1987, shall pay an annual fee of one hundred and sixty dollars (\$160.00) per patient bed which shall be paid into the State Treasury as Special Revenues. Fees may be paid on a quarterly basis due and payable on or before the last day of the quarter or may be paid in one sum. Failure to pay an installment when due shall result in a Notice of Delinquency from the Department of Human Services and a ten percent (10%) penalty assessed on the amount due. Failure to pay two quarterly installments shall be grounds for Notice of Revocation of the license of said facility. Nursing homes and other long term or intermediate care facilities operated by any unit or division of state government shall be exempted from paying the license fee.

"Of the Special Revenues raised, thirty-six percent (36%) shall be placed in the Alcohol and Drug Safety Fund for use at the Benton Detoxification Services Center of the Office of Alcohol and Drug Abuse Prevention [now Division of Alcohol and Drug Abuse Prevention] of the Department of Human Services. The remaining balance of the Special Revenues shall be designated for use by the Aging and Adult Services Division of the Department of Human Services. Aging and Adult Services programs eligible to receive Special Revenues include the Older Worker Program, and any other programs from which

there exists no federal matching requirements.

"(B) Applications shall be signed by the administrator of the facility. Applications shall set forth the full name and address of the nursing home for which licensure is sought and such additional information as the Office of Long Term Care may require, including affirmative evidence of ability to comply with such reasonable standards, rules and regulations as may be lawfully prescribed hereunder. Applications for annual license renewal shall be postmarked no later than July 2nd of each year. License applications for existing nursing homes received after the aforementioned date shall be subject to a penalty of twenty dollars per day per bed for each and every day after the aforementioned date of July 2nd. Licenses issued hereunder shall be effective on a fiscal year basis and shall expire on June 30th of each year. License shall be issued only for the premises and persons in the applications and shall not be transferrable. License shall be posted in a conspicuous place on the licensed premises.

"(C) Any person, partnership, association, or corporation establishing, conducting, managing, or operating any Long Term Care Facility within the meaning of this Act without first obtaining a license as provided by law shall be guilty of a Class A misdemeanor, and upon conviction thereof shall be liable to a fine imposed pursuant to a Class A misdemeanor. Each day such Long Term Care Facility shall operate after a first conviction shall be considered a Class D felony and upon conviction thereof shall be liable to a fine imposed pursuant to a Class D felony."

20-10-402. License required.

(a) It shall be unlawful for any person to act or serve in the capacity of nursing home administrator in this state unless the person has been licensed to do so as authorized in this subchapter.

(b) A person who serves as an administrator of a long-term care facility conducted exclusively for persons who rely upon treatment by spiritual means through prayer in accordance with the creed or tenets of a church or religious denomination shall be exempt from subsection (a) of this section and §§ 20-10-101(1)-(6), 20-10-203(b), 20-10-212, 20-10-301 — 20-10-303, 20-10-403, 20-10-405(b), 20-10-406, and 20-10-407.

History. Acts 1969, No. 58, §§ 2, 15; 1971, No. 721, § 1; A.S.A. 1947, §§ 82-2202, 82-2215.

Cross References. Operating nursing home without a license, §§ 20-9-202, 20-9-203.

20-10-403. Qualifications.

(a) The Office of Long-Term Care is vested with the authority and duty to prescribe minimum qualifications for long-term care facility administrators and license persons as long-term care facility administrators who make application for licensure and meet the minimum qualifications as prescribed in this section and by regulation of the office.

(b) No license shall be issued to a person as a long-term care facility administrator unless:

(1) He or she is at least twenty-one (21) years of age, of good moral character, and of sound physical and mental health;

(2) He or she has:

(A) Satisfactorily completed a course of instruction and training prescribed by the office. The course shall be so designed as to content and administered so as to present sufficient knowledge of the needs properly to be served by long-term care facilities, laws governing the operation of long-term care facilities and the protection of the interests of patients therein, and the elements of good long-term care facility administration;

(B) Presented evidence satisfactory to the office of sufficient education, training, or experience in the foregoing field to administer, supervise, and manage a long-term care facility; or

(C) Participated for one (1) year in an administrator-in-training program approved by the office; and

(3) He or she has passed an examination administered by the office and designed to test for competence in the subject matter referred to in subdivision (b)(2) of this section.

History. Acts 1969, No. 58, § 2; 1975, No. 119, § 2; A.S.A. 1947, § 82-2202.

20-10-404. Application and fees.

(a) Any person desiring to be licensed as a nursing home administrator shall make application to the Office of Long-Term Care on forms prescribed by the office and shall furnish such information with the application as shall be required by the office.

(b) An applicant shall complete the licensure process within one and one-half (1½) years from the date of application approval for licensure.

(c) Each application shall be accompanied by a licensure fee of one hundred dollars (\$100), one half of which shall be refunded to the applicant if he or she is refused licensure by the office.

(d) This section, § 20-10-405, and § 20-10-408 only apply to nursing home administrators and are not intended to require administrators in other kinds of long-term care facilities unless provided by regulation.

History. Acts 1985, No. 884, § 5; 1985, No. 968, § 5; A.S.A. 1947, § 82-2235; Acts 1987, No. 320, § 1.

A.C.R.C. Notes. A purported amend-

ment to § 20-10-401 contains provisions on licensing which may affect this section. See notes to § 20-10-401.

20-10-405. Renewal.

(a) Every active nursing home administrator's license shall be renewed on or before July 1 of each year by paying a fee of one hundred dollars (\$100) to the Office of Long-Term Care and by furnishing written documentation that the licensee has attended and accumulated a specific number of continuing education clock hours as established by the office.

(b) The fee for those nursing home administrators not actively employed by a nursing home facility as an administrator shall be fifty dollars (\$50.00), payable on or before July 1 of each year.

(c) If the annual licensure fee in full along with the renewal application and satisfactory documentation of compliance with continuing education requirements is not postmarked or received by the office on or before July 1, the licensee shall be ineligible to perform the duties of nursing home administrator, and the license shall be deemed suspended effective July 2.

(d) No request for renewal postmarked or received by the office after July 1 shall be considered unless, in addition to other requirements imposed by law or regulation, the licensee tenders a late charge in the amount of fifty dollars (\$50.00).

(e) Any license not renewed on or before September 1 shall expire effective September 2.

History. Acts 1969, No. 58, § 6; 1975, No. 119, § 5; 1985, No. 884, § 5; 1985, No. 968, § 5; A.S.A. 1947, §§ 82-2206, 82-2235; Acts 1987, No. 320, §§ 1, 2; 1995, No. 469, § 1.

20-10-406. Reciprocity.

(a) The Office of Long-Term Care may by regulation establish terms and conditions for reciprocity licensure of individuals currently licensed in good standing as long-term care facility administrators in other states.

(b) At their option, applicants qualifying for reciprocity licensure may be granted a nonrenewable temporary license not to exceed one hundred twenty (120) days upon condition of payment of a fifty dollar (\$50.00) temporary license fee and upon meeting the terms and conditions established by the office for the temporary license.

History. Acts 1969, No. 58, § 4; 1975, No. 119, § 4; A.S.A. 1947, § 82-2204; Acts 1995, No. 469, § 2.

20-10-407. Denial, revocation, or suspension.

(a) The Office of Long-Term Care may refuse to issue or renew a long-term care facility administrator’s license or may revoke or suspend the license of a long-term care facility administrator if it finds that the applicant or licensee does not qualify for licensure or has violated §§ 20-10-101(1)-(6), 20-10-203(b), 20-10-212, 20-10-301 — 20-10-303, 20-10-402, 20-10-403, 20-10-405(b), 20-10-406, and this section or regulations of the office relating to the proper administration and management of a long-term care facility.

(b) Any denial of the issuance or renewal of a long-term care facility license or a long-term care facility administrator’s license or the revocation or suspension of the license shall be after notice and hearing before an impartial hearing officer as provided in § 20-10-208 and shall be subject to judicial review as provided in § 20-10-212.

History. Acts 1969, No. 58, § 7; A.S.A. 1947, § 82-2207; Acts 2005, No. 898, § 5.

Amendments. The 2005 amendment substituted “an impartial hearing officer

as provided in § 20-10-208” for “the Long-Term Care Facility Advisory Board as provided in § 20-10-303” in (b).

20-10-408. Disposition of funds.

(a) All funds derived from fees collected pursuant to this subchapter are special revenues and shall be deposited into the State Treasury, there to be credited to the Nursing Home Personnel Training Fund to be utilized by the Office of Long-Term Care for development and implementation of training programs as may be prescribed by the office.

(b) Subject to rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the Department of Health and Human Services may transfer all unexpended funds relative to the licensure of nursing home administrators that pertain to fees collected, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

History. Acts 1987, No. 320, § 1.

A.C.R.C. Notes. References to “this chapter” in §§ 20-10-101, 20-10-203, 20-10-204, and 20-10-2007 might not apply to this section which was enacted subsequently.

References to “this subchapter” in §§ 20-10-401 — 20-10-407 might not apply to this section which was enacted subsequently.

SUBCHAPTER 5 — LONG-TERM CARE NETWORK

SECTION.	SECTION.
20-10-501. Definitions.	20-10-505. Demonstration projects for assessment agencies.
20-10-502. Coordination of state and non-state agencies.	20-10-506. Reports.
20-10-503. Interagency agreements.	20-10-507. Training program for home health aide providers.
20-10-504. Public information campaign.	

SECTION.

20-10-508. Interagency transfers of funds.

Preambles. Acts 1981, No. 380 contained a preamble which read: "Whereas, the State of Arkansas holds the long term care needs of its citizens as a primary concern, and recognizes the development of a coordinated and accessible network of long term care and related community-based services as essential in assuring referral to appropriate services and/or in preventing premature institutionalization; and

"Whereas, several different agencies and departments within State government currently administer funds related to long term care (primarily the Arkansas Department of Health, the Division of Social Services and the Office on Aging and Adult Services);

"Now, therefore..."

Effective Dates. Acts 1981, No. 380, § 11: Mar. 9, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the development of a coordinated network of long term care and community-based services is essential to the health and welfare of the people of this State, and that immediate steps toward implementation of the provisions of this Act are necessary to establish this coordinated network without undue delay. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public health and welfare

shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 179, § 38: Feb. 17, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint Interim Committee on Public Health, Welfare, and Labor and in its place established the House Interim Committee and Senate Interim Committee on Public Health, Welfare, and Labor; that various sections of the Arkansas Code refer to the Joint Interim Committee on Public Health, Welfare, and Labor and should be corrected to refer to the House and Senate Interim Committees on Public Health, Welfare, and Labor; that this act so provides; and that this act should go into effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

20-10-501. Definitions.

As used in this subchapter:

(1) "Committees" means the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor or appropriate subcommittees thereof to whom the state agencies in the long-term care network will report the progress of this effort;

(2) "Long-term care and related community-based services" means preventive, diagnostic, therapeutic, rehabilitative, and maintenance services available in the home and a variety of protected environments, including institutions, provided to persons, regardless of age, whose capabilities have been impaired by physical, mental, or emotional disability; and

(3) "State agencies" means the Department of Health and Human Services and any other state agency which administers funds for long-term care and related community-based services.

History. Acts 1981, No. 380, § 1;
A.S.A. 1947, § 82-2226; Acts 1997, No.
179, § 24.

20-10-502. Coordination of state and nonstate agencies.

(a) The state agencies which administer funds for long-term care shall work together to achieve a coordinated and accessible network of long-term care and related community-based services, utilizing an orderly and effective interagency referral system.

(b) The state agencies shall develop procedures and guidelines to assure that coordination between state agencies in the long-term care network will take place.

(c) Nonstate agencies shall be encouraged to participate in the long-term care network.

(d) Any nonstate agency which receives state funds related to long-term care services shall be required to abide by the policies and procedures of the long-term care network.

History. Acts 1981, No. 380, § 2;
A.S.A. 1947, § 82-2227.

20-10-503. Interagency agreements.

The state agencies shall work out formalized agreements among themselves that will set forth all the elements of this plan.

History. Acts 1981, No. 380, § 3;
A.S.A. 1947, § 82-2228.

20-10-504. Public information campaign.

The state agencies shall carry out a public information campaign to inform the citizens of Arkansas about this network of services.

History. Acts 1981, No. 380, § 4;
A.S.A. 1947, § 82-2229.

20-10-505. Demonstration projects for assessment agencies.

(a) State agencies shall establish a demonstration project in a limited number of counties in order to develop a comprehensive long-term care assessment system.

(b) This project shall develop the role of assessment agencies for the long-term care network.

(c) These assessment agencies shall not be engaged in the provision of services but shall perform an assessment function to measure the

client's total needs in order to refer the client to the appropriate level of care available.

History. Acts 1981, No. 380, § 5;
A.S.A. 1947, § 82-2230.

20-10-506. Reports.

(a) The state agencies shall collect and report management and caseload information to the appropriate legislative committees on a quarterly basis.

(b) Each agency shall identify to the committees all agency funds and personnel involved in the delivery of long-term care and related community-based services.

History. Acts 1981, No. 380, § 6;
A.S.A. 1947, § 82-2231; Acts 1997, No.
179, § 25.

20-10-507. Training program for home health aide providers.

The state agencies shall develop a plan for training home health aide providers.

History. Acts 1981, No. 380, § 7;
A.S.A. 1947, § 82-2232.

20-10-508. Interagency transfers of funds.

(a) The Department of Health and Human Services, the Division of Health of the Department of Health and Human Services, and any other state agency which administers funds and appropriations for long-term care and related community-based services may transfer funds and appropriations among themselves in such amounts as they deem necessary to carry out the intent of this subchapter.

(b) The transfers are to be made upon the request of the state agency, but only after having sought and received the advice of the committees, by the Chief Fiscal Officer of the State.

History. Acts 1981, No. 380, § 8;
A.S.A. 1947, § 82-2233; Acts 1997, No.
179, § 26.

SUBCHAPTER 6 — LONG-TERM CARE OMBUDSMAN ACT

SECTION.

20-10-601. Title.

20-10-602. Ombudsman program.

SECTION.

20-10-603. Access to patients.

A.C.R.C. Notes. References to “this chapter” in §§ 20-10-101, 20-10-203, 20-10-204, and 20-10-2007 might not apply to this subchapter which was enacted subsequently.

20-10-601. Title.

This subchapter shall be known and may be cited as the “Long-Term Care Ombudsman Act”.

History. Acts 1987, No. 252, § 1.

20-10-602. Ombudsman program.

The Division of Aging and Adult Services of the Department of Health and Human Services shall establish and administer an ombudsman program in accordance with the Older Americans Act, as amended, and all applicable federal and state laws, including the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1987, No. 252, § 2. referred to in this section, is codified as 42 U.S. Code. The Older Americans Act, U.S.C. § 3001 et seq.

20-10-603. Access to patients.

No ombudsman shall be denied access to any patient or resident in a long-term care facility during any period of operation of the facility.

History. Acts 1987, No. 252, § 3.

SUBCHAPTER 7 — LONG-TERM CARE AIDE TRAINING ACT

SECTION.

- 20-10-701. Title.
- 20-10-702. Definition.
- 20-10-703. Exemptions.

SECTION.

- 20-10-704. Training program.
- 20-10-705. Regulations.
- 20-10-706. [Repealed.]

A.C.R.C. Notes. References to “this chapter” in §§ 20-10-101, 20-10-203, 20-10-204, and 20-10-2007 might not apply to this subchapter which was enacted subsequently.

Effective Dates. Acts 1987, No. 689, § 8: Apr. 7, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that the adequacy of personal care for Arkansas residents in long term care facilities could be assured through a formalized training program; that the training program should be implemented as soon as possible to preserve the public peace, health, and safety. Therefore, an emergency is de-

clared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval.”

Acts 2005, No. 2191, § 11: Apr. 13, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that various long-term care facilities are operating in this state without having obtained a license; that there is no state oversight or protection for the vulnerable residents in these facilities; and that there is no way of ensuring that the facilities properly treat and protect these residents under state

long-term care laws. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If

the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

20-10-701. Title.

This subchapter shall be known and may be cited as the "Long-Term Care Aide Training Act".

History. Acts 1987, No. 689, § 1.

20-10-702. Definition.

As used in this subchapter, "long-term care facility" means a nursing home, residential care facility, assisted living facility, an adult day-care facility, or any other facility which provides long-term medical or personal care.

History. Acts 1987, No. 689, § 5; 2005, No. 2191, § 6.

Amendments. The 2005 amendment inserted "assisted living facility".

20-10-703. Exemptions.

Students who have satisfactorily completed a nursing assistant or aide training program in either a public or private proprietary school licensed by the State of Arkansas are excluded from this subchapter since they will already have attained the skills needed to serve as aides in long-term care facilities.

History. Acts 1987, No. 689, § 4.

20-10-704. Training program.

The Office of Long-Term Care shall establish a training program to be completed by all aides in long-term care facilities who provide personal care to residents.

History. Acts 1987, No. 689, § 2.

20-10-705. Regulations.

(a) The Office of Long-Term Care shall promulgate regulations necessary to implement an aide training program for all long-term care facilities in this state, to prescribe in-service training programs, and to enforce compliance with those programs.

(b)(1) The regulations shall require training programs to:

(A) Provide no fewer than ninety (90) clock hours of training; and

(B) Include in those ninety (90) hours no fewer than fifteen (15) clock hours of training specific to Alzheimer’s disease and related dementia.

(2) The training programs required under this subsection shall take effect only if funds are available.

(3) The training program established under this section shall be known as the “Barbara Broyles Training Program”.

History. Acts 1987, No. 689, § 3; 2005, No. 1184, § 1.

Amendments. The 2005 amendment added (b).

20-10-706. [Repealed.]

Publisher’s Notes. This section, concerning the requirement of personal care and home-health aide services to complete a training program, and registration, certification and exemptions, was repealed in

its entirety by Acts 1992 (1st Ex. Sess.), No. 1, § 6; it was also partially repealed by Acts 1992 (1st Ex. Sess.), No. 74, § 9. The section was derived from Acts 1991, No. 922, § 17.

SUBCHAPTER 8 — HOME HEALTH CARE SERVICES

SECTION.

- 20-10-801. Definitions.
- 20-10-802. Exceptions from licensing requirements.
- 20-10-803. Penalties.
- 20-10-804. Home Health Care Service Agency Advisory Council — Creation — Members.
- 20-10-805. Home Health Care Service Agency Advisory Council — Powers and duties.
- 20-10-806. Administration — Rules and

SECTION.

- regulations.
- 20-10-807. License required.
- 20-10-808. Application for license — Temporary license.
- 20-10-809. Issuance of licenses.
- 20-10-810. Denial, suspension, or revocation of license.
- 20-10-811. Information confidential.
- 20-10-812. Fees.
- 20-10-813. Transfer of licenses and permits upon dissolution.

A.C.R.C. Notes. References to “this chapter” in §§ 20-10-101, 20-10-203, 20-10-204, and 20-10-2007 might not apply to this subchapter which was enacted subsequently.

References to “this subchapter” in §§ 20-10-801 — 20-10-812 might not apply to § 20-10-813 which was enacted subsequently.

Effective Dates. Acts 1995, No. 1321, § 5: Apr. 14, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly that home health care services should be dealt with by the private sector obtaining licenses or permits of approval from any agency of the state; that this act so provides; and this act should go into effect as soon as possible in order to maximize home health

care services throughout this state. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1999, No. 1508, § 19: Apr. 15, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly that this act makes various technical corrections in the Arkansas Code; that this act further clarifies the law to provide that the Arkansas Code Revision Commission may correct errors resulting from enactments of prior sessions; and that this act should go into effect immediately in order to be applicable during the codification process

of the enactments of this regular session. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved

nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

RESEARCH REFERENCES

Am. Jur. 70C Am. Jur. 2d, Soc. Sec.,
§ 2192 et seq.

20-10-801. Definitions.

As used in this subchapter:

(1) "Agency" means any person, partnership, association, corporation, or other organization, whether public or private, proprietary or nonprofit;

(2) "Class A license" means that the applicant is at the time of filing an application a Medicare-certified home health agency. If the applicant is not at the time of filing its application a certified home health agency, it shall be in the process of receiving its certification from the Health Care Financing Administration;

(3) "Class B license" means that the application shall show proof of the services provided and the geographical territory in which those services have been provided as of July 20, 1987, and that the applicant shall have requested a survey for the purpose of confirming the services provided and territory covered;

(4) "Division" means the Division of Health Facilities Services of the Division of Health of the Department of Health and Human Services;

(5) "Home health care services" means the providing or coordinating of acute, restorative, rehabilitative, maintenance, preventive, or health promotion services through professional nursing or by other therapeutic services such as physical therapy, occupational therapy, speech therapy, home health aide, or personal services in a client's residence;

(6) "Home health care services agency" means an agency licensed to provide home health care services;

(7) "Place of business" means any office of a home health agency including subunits;

(8) "Residence" means a place where a person resides, including a home, nursing home, or convalescent home for the disabled or aged; and

(9) "Subunit" means an organization of an agency that provides home health care services and which serves patients in a geographic area different from that of the agency.

History. Acts 1987, No. 956, § 1.

20-10-802. Exceptions from licensing requirements.

The following persons are not required to be licensed under § 20-10-807:

(1) A physician, dentist, registered nurse, or physical therapist who is currently licensed under the laws of this state who provides home health services only to a patient as a part of his or her private office practice when the services are incidental to the office practice;

(2) The following health care professionals providing home health services as a sole practitioner:

(A) A registered nurse;

(B) A licensed vocational nurse;

(C) A physical therapist;

(D) An occupational therapist;

(E) A speech therapist;

(F) A medical social worker; or

(G) Any other health care professional as determined by the Division of Health of the Department of Health and Human Services;

(3) A nonprofit registry operated by a national or state professional association or society of licensed health care practitioners, or a subdivision thereof, that operates solely as a clearinghouse to put consumers in contact with licensed health care practitioners who will give care in a patient's residence and that neither maintains the official patient records nor directs patient services;

(4) An individual whose permanent residence is in the patient's residence;

(5) An employee of a person holding a license under this subchapter who provides home health services only as an employee of the licensed person and who receives no benefit for providing home health services other than wages from the employer;

(6) A home, nursing home, convalescent home, or other institution for the disabled or aged that provides health services only to residents of the home or institution;

(7) A person who provides one (1) health service through a contract with a person licensed;

(8) A durable medical equipment supply company;

(9) A pharmacy or wholesale medical supply company that furnishes those services that relate to drugs and supplies to persons in their homes;

(10) A hospital or other licensed health care facility serving only inpatient residents;

(11) A visiting nurse service or home aide service constructed by and for the adherents of a religious denomination for the purpose of providing services for those who depend upon spiritual means through prayer alone for healing; and

(12) Persons providing services to one (1) or more developmentally disabled persons, as defined in § 20-48-101, under a license or certificate from the Division of Developmental Disabilities Services of the Department of Health and Human Services.

History. Acts 1987, No. 956, § 2; 2003, No. 1783, § 1.

Amendments. The 2003 amendment added (12).

20-10-803. Penalties.

(a)(1) Any person who violates any provision of this subchapter or regulations lawfully promulgated under this subchapter shall be guilty of a violation.

(2) Upon conviction, that person shall be liable to a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100) for the first offense and not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each subsequent offense.

(b) Each day that the person performs home health services after a first conviction shall be considered a subsequent offense.

History. Acts 1987, No. 956, § 5; 2005, No. 1994, § 111.

Amendments. The 2005 amendment inserted the present subdivision designations; substituted “under this subchapter

shall be guilty of a violation” for “hereunder shall be guilty of a misdemeanor” in (a)(1); and, in (b), inserted “person performs” and deleted “shall operate.”

20-10-804. Home Health Care Service Agency Advisory Council — Creation — Members.

(a) There is established a Home Health Care Service Agency Advisory Council composed of seven (7) members.

(b)(1)(A) Five (5) members shall consist of one (1) representative each from the following types of home health care services:

- (i) Freestanding nonprofit;
- (ii) Freestanding proprietary;
- (iii) Hospital-based;
- (iv) Area agencies on aging; and
- (v) The Arkansas Department of Home Health.

(B) The five (5) members shall be recommended by the Arkansas Association of Home Health Agencies.

(2) One (1) consumer member shall be recommended by the Arkansas Chapter of the American Association of Retired Persons, and one (1) member shall be recommended by the Arkansas State Hospice Association.

(c) The members shall serve for staggered three-year terms.

(d) The Director of the Division of Health Facilities Services of the Division of Health of the Department of Health and Human Services shall serve as chair ex officio of the council.

(e)(1) The council shall meet as frequently as the chair may deem necessary to carry out the duties of the council.

(2) Upon request of a majority of the council members, the chair shall call a meeting of the council immediately.

History. Acts 1987, No. 956, § 8.

A.C.R.C. Notes. As there is no Arkan-

sas Department of Home Health, the reference in subdivision (b)(1)(A) is unclear.

Publisher's Notes. Acts 1987, No. 956, that the terms of no more than three § 8, provided, in part, that the terms of members will expire in any one year. the members shall be staggered by lot so

20-10-805. Home Health Care Service Agency Advisory Council — Powers and duties.

(a) The Home Health Care Service Agency Advisory Council shall advise and assist the Director of the Division of Health Facilities Services of the Division of Health of the Department of Health and Human Services and the State Board of Health in carrying out this subchapter and the rules and regulations promulgated pursuant to it.

(b) The council shall request, receive, review, and consider all proposed rules and regulations which may be recommended by the director. The council shall review these recommendations with reference to the practicability of proposed rules and regulations for the operation of home health services.

(c) The council's authority shall be limited to the advisory function, and it shall advise the chair of the council as to agreement or disagreement with any recommended rule, regulation, or standard affecting home health care services. If a majority of the members of the council disagree with a proposed rule, regulation, or standard, the council may file a report of its objections with the board.

History. Acts 1987, No. 956, § 8.

20-10-806. Administration — Rules and regulations.

(a) This subchapter shall be administered by the Division of Health Facilities Services of the Division of Health of the Department of Health and Human Services.

(b) The State Board of Health shall adopt, promulgate, and enforce such rules, regulations, and standards as may be necessary for the accomplishment of the purposes of this subchapter. The rules, regulations, and standards shall be modified, amended, or rescinded from time to time by the board as may be in the public interest, after first complying with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1987, No. 956, § 3.

20-10-807. License required.

It shall be unlawful for any agency to provide home health care services unless licensed pursuant to this subchapter.

History. Acts 1987, No. 956, § 4.

20-10-808. Application for license — Temporary license.

(a) An applicant for a license to provide a home health service shall:

(1) File a written application on a form prescribed by the Division of Health Facilities Services of the Division of Health of the Department of Health and Human Services;

(2) File with the application the name of the owner of the services or a list of names of persons who own an interest in the service and a list of any businesses with which the service business subcontracts and in which the owner or owners of the service business hold as much as five percent (5%) of the ownership;

(3) Establish a place of business within the State of Arkansas that maintains home health service records and directs patient services;

(4) Cooperate with any inspections the Division of Health Facilities Services may require for a license and comply with regulations and standards promulgated under this subchapter; and

(5) Pay to the Division of Health Facilities Services a license fee as prescribed by § 20-10-812.

(b) In addition to the requirements listed in subsection (a) of this section for new and existing agencies providing home health services on July 20, 1987, those agencies shall furnish the following information for a Class A or Class B license:

(1) For a Class A license, if the applicant is at the time of filing an application a Medicare-certified home health agency, it shall provide proof of its compliance with federal conditions of participation. If the applicant is not at the time of filing its application a certified home health agency, it shall be in the process of receiving its certification from the Health Care Financing Administration;

(2) For a Class B license, the applicant shall show proof of the services provided and the geographical territory in which those services have been provided as of July 20, 1987, and it shall have requested a survey for the purposes of confirming the services provided and the territory covered.

(c) The Director of the Division of Health Facilities Services of the Division of Health of the Department of Health and Human Services may issue a temporary license to an applicant for a period not to exceed six (6) months.

History. Acts 1987, No. 956, §§ 3, 9.

A.C.R.C. Notes. Acts 1987, No. 956, § 9, provided, in part, that agencies providing home health care services on July

20, 1987, could continue to provide services without a license until three months after the regulations of the State Board of Health became effective.

20-10-809. Issuance of licenses.

(a)(1) The Director of the Division of Health Facilities Services of the Division of Health of the Department of Health and Human Services shall issue licenses for the operation of home health care services agencies which are found to comply with this subchapter and with the regulations of the State Board of Health.

(2) The director shall also issue licenses for the operation of subunits of a home health care services agency.

(b) Licenses shall be issued to the entity and persons listed in the application for licensure and shall not be transferable.

History. Acts 1987, No. 956, § 4.

20-10-810. Denial, suspension, or revocation of license.

The Director of the Division of Health Facilities Services of the Division of Health of the Department of Health and Human Services may deny, suspend, or revoke licensure on any of the following grounds:

(1) Violation of this subchapter or the rules and regulations lawfully promulgated under this subchapter; and

(2) Permitting, aiding, or abetting the commission of any unlawful act in connection with the operation of the home health service.

History. Acts 1987, No. 956, § 4.

20-10-811. Information confidential.

Information received by the Director of the Division of Health Facilities Services of the Division of Health of the Department of Health and Human Services through inspection or otherwise authorized under this subchapter shall not be disclosed publicly in such manner as to identify individuals or a home health agency except in a proceeding involving the question of licensing or revocation of a license.

History. Acts 1987, No. 956, § 6.

20-10-812. Fees.

(a)(1) The Division of Health Facilities Services of the Division of Health of the Department of Health and Human Services may levy and collect a fee for the issuance of an annual license to a home health care services agency or a subunit of a home health care services agency. The license fee for a home health care services agency shall be an annual fee of one thousand dollars (\$1,000), and the fee for a subunit shall be an annual fee of one hundred dollars (\$100).

(2) The fees collected under this subsection shall be deposited into the Health Facility Services Revolving Fund.

(b) Except for those fees set forth in subsection (a) of this section, all fees levied and collected under this subchapter shall be special revenues and shall be deposited into the State Treasury and credited to the Public Health Fund.

(c) Subject to those rules and regulations that may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the Division of Health of the Department of Health and Human Services may transfer all unexpended funds relative to this subchapter that pertain to fees collected except for those collected under subsection (a) of this section, as certified by the Chief Fiscal Officer of the State, to be

carried forward and made available for expenditures for the same purposes for any following fiscal year.

History. Acts 1987, No. 956, § 7; 1997, No. 574, § 2; 1999, No. 1508, § 9.

Cross References. Health Facility Services Revolving Fund, § 19-5-1089.

20-10-813. Transfer of licenses and permits upon dissolution.

Upon the dissolution of any corporation which on April 14, 1995, is licensed to provide home health care services, the Division of Health of the Department of Health and Human Services, the Health Services Permit Agency, the Health Services Permit Commission, and any other agency involved may transfer the dissolved corporation's licenses and permits of approval to a stockholder of the dissolved corporation, and that stockholder may continue to perform home health care services under the transferred license and permit of approval.

History. Acts 1995, No. 1321, § 1; 2001, No. 1800, § 16.

A.C.R.C. Notes. References to "this subchapter" in §§ 20-10-801 — 20-10-812 may not apply to this section which was enacted subsequently.

Amendments. The 2001 amendment inserted "Permit" following "Health Services."

SUBCHAPTER 9 — ARKANSAS LONG-TERM CARE FACILITY RECEIVERSHIP LAW

SECTION.

- 20-10-901. Title.
- 20-10-902. Purpose.
- 20-10-903. Definitions.
- 20-10-904. Grounds for appointment.
- 20-10-905. Petition for receivership.
- 20-10-906. Hearing on receivership.
- 20-10-907. Emergency appointment.
- 20-10-908. Qualifications of receiver.
- 20-10-909. Duties of receiver.

SECTION.

- 20-10-910. Compensation of receiver.
- 20-10-911. Duration of receivership.
- 20-10-912. Bond of receiver.
- 20-10-913. Automatic stay.
- 20-10-914. Accounting for funds.
- 20-10-915. Alternative procedure.
- 20-10-916. Long-Term Care Facility Receivership Fund Account.

Publisher's Notes. Acts 1988 (4th Ex. Sess.), No. 3, § 2, and No. 13, § 2, provided that if any part of this subchapter is found to conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this subchapter is declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this subchapter.

Effective Dates. Acts 1988 (4th Ex. Sess.), No. 3, § 4 and No. 13, § 4: July 15, 1988. Emergency clause provided: "It is hereby found and determined by the General Assembly that during recent months, certain inadequacies in the continuum of

health care for the older citizens of this State have been brought to the attention of the General Assembly; that this Act is necessary to assure each citizen of this State in need of long-term care that a high quality of care at affordable cost will be provided; that the older citizenry of this State deserve the best possible care; that the immediate passage of this Act is essential to the health, welfare and safety of the citizens of the State of Arkansas and to avoid irreparable harm upon the proper administration of an essential government program. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in

full force and effect from and after its passage and approval.”

20-10-901. Title.

This subchapter may be known as the “Arkansas Long-Term Care Facility Receivership Law”.

History. Acts 1988 (4th Ex. Sess.), No. 3, § 1; 1988 (4th Ex. Sess.), No. 13, § 1.

20-10-902. Purpose.

It is the purpose of this subchapter to develop a mechanism whereby the concept of receivership can be utilized for the protection of residents in long-term care facilities. It is the intent of the General Assembly that receivership shall be a remedy of last resort when all other methods of remedy have failed or when the implementation of other remedies would be futile. It is not the intent of this subchapter to circumvent the Health Services Permit Program of the Health Services Permit Commission. No court or administrative agency shall interpret the contents of this subchapter to allow the transfer of beds or the license of a facility under receivership without approval of the commission as required by § 20-8-101 et seq.

History. Acts 1988 (4th Ex. Sess.), No. 3, § 1; 1988 (4th Ex. Sess.), No. 13, § 1; 2001, No. 1800, § 17.

Amendments. The 2001 amendment inserted “Permit” following “Health Services” twice.

20-10-903. Definitions.

- As used in this subchapter:
- (1) “Administrator” means a long-term care facility administrator as defined in § 20-10-101;
 - (2) “Emergency” means a situation, a physical condition, or one (1) or more practices, methods, or operations which threaten the health, security, or welfare of residents;
 - (3) “Facility” means a long-term care facility which is required to be licensed under § 20-10-224;
 - (4) “Habitual violation” means a violation of state or federal law which, due to its repetition, presents a reasonable likelihood of serious physical or mental harm to residents;
 - (5) “Licensee” means any person or any other legal entity who is licensed or required to be licensed to operate a facility;
 - (6) “Owner” means the holder of the title to the real estate in which the facility is maintained;
 - (7) “Resident” means any person who lives in and receives services or care in a long-term care facility; and

(8) "Substantial violation" means a violation of state or federal law which presents a reasonable likelihood of serious physical or mental harm to residents.

History. Acts 1988 (4th Ex. Sess.), No. 3, § 1; 1988 (4th Ex. Sess.), No. 13, § 1.

20-10-904. Grounds for appointment.

The following circumstances shall be grounds for the appointment of a receiver to operate a long-term care facility:

(1) An emergency exists in a facility which threatens the health, security, or welfare of residents;

(2) A facility is in substantial or habitual violation of the standards of health, safety, or resident care established under state or federal regulations to the detriment of the welfare of the residents;

(3) A facility intends to close but has not arranged at least thirty (30) days prior to closure for the orderly transfer of its residents;

(4) The facility is insolvent; and

(5) The Department of Health and Human Services has suspended, revoked, or refused to renew the existing license of the facility.

History. Acts 1988 (4th Ex. Sess.), No. 3, § 1; 1988 (4th Ex. Sess.), No. 13, § 1.

20-10-905. Petition for receivership.

(a) The Department of Health and Human Services, Attorney General, or prosecuting attorney or duly appointed deputy prosecuting attorney of the district in which the facility is located may file a complaint in the circuit court of the county in which the facility is located requesting the appointment of a receiver.

(b) A complaint for appointment of a receiver pursuant to this subchapter shall have precedence and priority over any civil case pending in the circuit court in which the complaint is filed.

(c) The court shall hold a hearing on the complaint within five (5) days of the filing of the complaint.

(d) The complaint and notice of hearing shall be served on the owner and administrator or licensee of the facility. In cases when the department is not the plaintiff in the action, a copy of the complaint and notice shall be forwarded by mail to the Director of the Department of Health and Human Services by the plaintiff.

History. Acts 1988 (4th Ex. Sess.), No. 3, § 1; 1988 (4th Ex. Sess.), No. 13, § 1.

20-10-906. Hearing on receivership.

The court shall appoint a receiver if it finds that any one (1) of the grounds for appointment set forth in § 20-10-904 is satisfied.

History. Acts 1988 (4th Ex. Sess.), No. 3, § 1; 1988 (4th Ex. Sess.), No. 13, § 1.

20-10-907. Emergency appointment.

(a) If the complaint filed under § 20-10-905 is filed by the Department of Health and Human Services and alleges that grounds set out in § 20-10-904(1) or (2) exist within a facility and is accompanied by a verified affidavit setting forth facts which would constitute such a ground, a temporary receiver shall be appointed with or without notice to the owner or licensee.

(b) The temporary appointment of a receiver without notice to the owner, licensee, or administrator may be made only if the court is satisfied that the department has made a diligent attempt to provide reasonable notice under the circumstances. The delivery of a copy of the complaint to the facility upon filing shall constitute reasonable notice for issuance of a temporary receivership order by the court.

(c) Upon appointment of a temporary receiver, the department shall proceed immediately to obtain service as provided in § 20-10-905(d).

(d) If the department does not proceed with the complaint, the court shall dissolve the temporary receivership after ten (10) days.

History. Acts 1988 (4th Ex. Sess.), No. 3, § 1; 1988 (4th Ex. Sess.), No. 13, § 1.

20-10-908. Qualifications of receiver.

(a) The court may appoint any licensed nursing home administrator or any qualified person as a receiver who does not have a conflict of interest.

(b) The Department of Health and Human Services shall maintain a list of qualified persons to be furnished to the court. Preference shall be given to persons with experience in delivery of health care services and operation of long-term care facilities.

(c) No person may be considered to be qualified to be a receiver who:

- (1) Is the owner, licensee, or administrator of the facility;
- (2) Is affiliated with the facility;
- (3) Has a financial interest in the facility; or
- (4) Has owned or operated a facility that has been ordered into receivership.

History. Acts 1988 (4th Ex. Sess.), No. 3, § 1; 1988 (4th Ex. Sess.), No. 13, § 1.

20-10-909. Duties of receiver.

The receiver appointed pursuant to this subchapter:

(1) Shall operate the facility in such a manner as to assure safety and adequate health care for the residents;

(2) Shall receive and expend in a reasonable and prudent manner the revenues of the facility;

(3) May hire, direct, manage, and discharge any employees, including the administrator of the facility;

(4) Shall be entitled to and shall take possession of all property or assets of residents which are in the possession of the licensee or operator of the facility. The receiver shall preserve all property, assets, and records of residents of which the receiver takes possession;

(5) May contract for such outside services as may be needed for the operation of the facility. Any contract for outside services in excess of three thousand dollars (\$3,000) shall be approved by the court;

(6) Shall pay commercial creditors of the facility determined by the receiver to be valid;

(7) May do all things necessary and proper to maintain and operate the facility in accordance with sound fiscal policies. The receiver shall take such action as is reasonably necessary to protect or conserve the assets or property of which the receiver takes possession and may use such assets or property only in the performance of the powers and duties set out in this section;

(8) Shall conduct the day-to-day business operations of the facility;

(9) Shall correct or eliminate any deficiency in the structure or furnishings of the facility which endangers the safety or health of residents while they remain in the facility, provided the total cost of correction does not exceed three thousand dollars (\$3,000). The court may order expenditures for this purpose in excess of three thousand dollars (\$3,000) upon application from the receiver, after notice to the owner and hearing;

(10) Shall collect incoming payments from all sources and apply them to the costs incurred in the performance of his or her functions as receiver, including the compensation of the receiver;

(11) Shall honor existing leases, mortgages, chattel mortgages, and security interests determined by the receiver to be valid;

(12) Shall remedy violations of federal and state regulations governing the operation of the facility;

(13) May close the facility or negotiate with the owners for the sale of the facility upon approval of the court;

(14) Shall give each resident of the facility and the family representative of each resident notice of the receivership;

(15)(A) May hire consultants or undertake any studies of the facility he or she deems appropriate.

(B) Any expenditure under this subdivision (15) in excess of three thousand dollars (\$3,000) shall be approved by the court.

(C) "Consultants" excludes the owner, licensee, administrator, persons affiliated with the facility, persons with a financial interest in the facility, and persons who have owned or operated a facility that has been ordered into receivership unless approved by the court; and

(16) Shall file reports concerning the receivership and expenditures with the court in such frequency as the court deems appropriate and shall forward a copy of each report to the owner and administrator or licensee of the facility.

History. Acts 1988 (4th Ex. Sess.), No. 3, § 1; 1988 (4th Ex. Sess.), No. 13, § 1.

20-10-910. Compensation of receiver.

(a) The court shall set a reasonable compensation to include salary and reasonable expenses for the receiver to be paid as a necessary expense of the facility under the receivership. Reasonable expenses may include charges for a liability insurance policy covering negligence of the receiver and employees of the facility for the duration of the receivership.

(b) If the receiver does not have sufficient funds to pay the salary from the revenues of the facility, the receiver may petition the court for permission to file a claim with the Department of Health and Human Services for payment from the fund as established in § 20-10-916.

History. Acts 1988 (4th Ex. Sess.), No. 3, § 1; 1988 (4th Ex. Sess.), No. 13, § 1.

20-10-911. Duration of receivership.

(a) The receiver shall be appointed for an initial period of not more than six (6) months.

(b) The initial six-month period may be extended for an additional period of ninety (90) days with approval of the court upon a showing of good cause.

History. Acts 1988 (4th Ex. Sess.), No. 3, § 1; 1988 (4th Ex. Sess.), No. 13, § 1.

20-10-912. Bond of receiver.

The court may require a receiver to post a bond, which may include provision for costs and attorney's fees, upon breach of fiduciary duty.

History. Acts 1988 (4th Ex. Sess.), No. 3, § 1; 1988 (4th Ex. Sess.), No. 13, § 1.

20-10-913. Automatic stay.

(a) No person or court of this state shall impede the operation of a receivership created under this subchapter.

(b) For a sixty-day period subsequent to the appointment of a receiver, there shall be an automatic stay of any action that would interfere with the functioning of the facility, including, but not limited to, cancellation of insurance policies executed by the licensee, termination of utility services, executions, attachments or setoffs, and repossession of equipment used in the facility.

History. Acts 1988 (4th Ex. Sess.), No. 3, § 1; 1988 (4th Ex. Sess.), No. 13, § 1.

20-10-914. Accounting for funds.

Within thirty (30) days after termination, the receiver shall file with the court a complete accounting of all property of which the receiver has taken possession, of all funds collected, and of the expenses of the receivership.

History. Acts 1988 (4th Ex. Sess.), No. 3, § 1; 1988 (4th Ex. Sess.), No. 13, § 1.

20-10-915. Alternative procedure.

(a)(1) In lieu of bringing an action under this subchapter, the Department of Health and Human Services, in its sole discretion, may place a designated employee from the department to act as monitor in the facility when any of the grounds for receivership exists in a facility.

(2) The monitor shall observe operation of the facility, assist the facility by advising it on how to comply with the state and federal regulations, and report periodically to the department on the operation of the facility.

(3) A monitor shall remain in a facility not to exceed sixty (60) days.

(b) At the end of the monitoring period, if the department determines that insufficient progress has been made by the facility for elimination of the grounds for appointment of a receivership, the department may proceed for appointment of a receivership upon the grounds which existed at the time of placement of the monitor in the facility.

(c) The department may promulgate any rules and regulations as necessary to implement this section.

History. Acts 1988 (4th Ex. Sess.), No. 3, § 1; 1988 (4th Ex. Sess.), No. 13, § 1.

20-10-916. Long-Term Care Facility Receivership Fund Account.

(a) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund account to be known as the "Long-Term Care Facility Receivership Fund Account" of the Department of Human Services Fund. The fund account shall consist of general revenues and such other funds as may be provided by law.

(b) The fund account established in this section shall be administered and disbursed under the direction of the Director of the Department of Health and Human Services for the purpose of paying the expenses of receivers appointed under this subchapter.

(c) No money shall be expended from this fund account for any purpose except when the funds generated by a long-term care facility in this state are found to be insufficient by a court of law to pay the reasonable expenses of a receiver after all other operating expenses of the facility have been paid from the facility's revenue.

(d) Any balance remaining in the fund account at the close of each fiscal year shall be retained in that fund account to be available for the same purposes.

(e) Beginning July 1, 1991, and each July 1 of an odd-numbered year thereafter, the Treasurer of State shall transfer from the General Revenue Fund Account of the State Apportionment Fund to the Long-Term Care Facility Receivership Fund Account an amount sufficient to maintain a fund balance of one hundred thousand dollars (\$100,000).

History. Acts 1988 (4th Ex. Sess.), No. 3, § 1; 1988 (4th Ex. Sess.), No. 13, § 1.

Publisher's Notes. Acts 1988 (4th Ex. Sess.), No. 3, § 1, provided, in part, that on July 1, 1988, the State Treasurer shall

transfer, from the General Revenue Fund Account of the State Apportionment Fund, the sum of \$100,000 to the Long-Term Care Facility Receivership Fund Account.

SUBCHAPTER 10 — OMNIBUS LONG-TERM CARE REFORM ACT OF 1988

SECTION.

- 20-10-1001. Title.
- 20-10-1002. Intent.
- 20-10-1003. Residents' rights.
- 20-10-1004. Prohibiting new admissions — Hearings and appeals.
- 20-10-1005. Procedure for transfer or discharge of residents — Violations.
- 20-10-1006. Residents' councils — Staff coordinators — Family councils.

SECTION.

- 20-10-1007. Adverse action against residents prohibited — Violations.
- 20-10-1008. Disposition of civil penalties.
- 20-10-1009. Right to rescind long-term care contracts.
- 20-10-1010. End-of-life treatment of long-term care residents.

A.C.R.C. Notes. This subchapter may be affected by § 20-10-1201 et seq.

Publisher's Notes. Acts 1988 (4th Ex. Sess.), No. 17, § 3, provided, that the Office of Long-Term Care shall promulgate any rules or regulations required by this subchapter by October 1, 1988.

Acts 1988 (4th Ex. Sess.), No. 17, § 4, provided, that any information or materials required by this subchapter to be provided to a resident of a long-term care facility at the time of admission to the facility shall be provided to each resident of a long-term care facility within 45 days of publication of final rules or regulations under this subchapter.

Effective Dates. Acts 1988 (4th Ex. Sess.), No. 17, § 6: July 15, 1988. Emergency clause provided: "It is hereby found and determined by the General Assembly

that the state lacks procedures to adequately protect the infirmed and frail elderly who reside in long-term care facilities within this state; That this act should go into effect immediately upon passage to shorten the amount of time required for necessary rules and regulations to be promulgated for implementation of this act and to provide at the earliest possible date some assurance to the residents of long-term care facilities that a high quality of life and the protection of their welfare and health is necessary and important to the entire citizenry of the State of Arkansas. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

20-10-1001. Title.

This subchapter may be known as the “Omnibus Long-Term Care Reform Act of 1988”.

History. Acts 1988 (4th Ex. Sess.), No. 17, § 1.

20-10-1002. Intent.

It is the intent of the General Assembly to provide protection for those citizens residing in long-term care facilities to assure the residents the highest quality of life while protecting their health and welfare.

History. Acts 1988 (4th Ex. Sess.), No. 17, § 1.

20-10-1003. Residents’ rights.

(a) A long-term care facility shall protect and promote the rights, benefits, or privileges guaranteed by law, the Constitution of the United States, and the Constitution of the State of Arkansas for all residents.

(b) The Office of Long-Term Care shall promulgate through rules and regulations a residents’ bill of rights which shall include provisions addressing each of the following as a minimum statement of residents’ rights. The office may place restrictions or limitations on any right listed in this subsection when that is necessary to protect the health, welfare, or safety of the resident or other residents:

- (1) The right to exercise all constitutional and legal rights;
- (2) The right to a safe and clean environment;
- (3) The right to dignity and respect;
- (4) The right to nursing and medical care;
- (5) The right to personal cleanliness;
- (6) The right to choose at their own expense a personal physician and pharmacist;
- (7) The right to have knowledge and input into medical treatment, records, and plan of care;
- (8) The right to refuse experimental treatment;
- (9) The right to confidentiality of medical records;
- (10)(A) The right to be free from physical or mental abuse, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident’s medical symptoms.
- (B) Restraints may be imposed only to ensure the physical safety of the resident or of other residents and only upon the written order of a physician that specifies the duration and circumstances under which the restraints are to be used, except for emergency conditions until such an order could reasonably be obtained;
- (11) The right to exercise civil liberties, including the right to vote;
- (12) The right to the free exercise of religion, including the right to rely on spiritual means for treatment;

(13) The right to privacy, including the right to refuse being photographed by persons other than those licensed under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.;

(14) The right to personal clothing and belongings;

(15) The right to personal financial information; and

(16) The right to direct whether to receive nutrition or hydration.

(c) The office shall prescribe a procedure to be followed by all long-term care facilities for prompt reporting of violations of residents' rights and resolution of grievances.

(d) The long-term care facility shall furnish a copy of the residents' bill of rights to each resident or resident's representative at the time of admission and to each employee of the facility. A written acknowledgment of receipt shall be included by the facility in the resident's file and personnel file of each employee.

(e)(1) Failure to comply with the provisions of this section or verified violations of residents' rights shall be considered a Class B violation under § 20-10-205 for which civil penalties set forth in § 20-10-206 may be imposed.

(2) Any appeal shall be under the procedure set forth in § 20-10-208.

(f) A second or subsequent offense, for purposes of determining a penalty amount, means a violation of the same right previously violated although it need not have been committed by the same employee of the facility or against the same resident.

(g) The office shall prescribe through rules and regulations a synopsis of the residents' bill of rights which shall be posted at all times in a conspicuous location accessible to residents and the public in the facility.

History. Acts 1988 (4th Ex. Sess.), No. 17, § 1; 1989, No. 33, § 1; 2003, No. 1322, § 1.

A.C.R.C. Notes. Acts 2003, No. 1322, § 6, provided: "Legislative purpose. (a)(1) The General Assembly recognizes that residents of long-term care facilities are among the most vulnerable of the state's citizens.

"(2) Further, the disproportionate number of these residents who are Medicaid eligible, and who have little or no close family involvement in their lives, heightens their vulnerability.

"(b) It is the intent of the General Assembly that, to ensure proper care and treatment of these individuals, particularly at end-of-life, the circumstances and conditions under which the withholding of nutrition, hydration, or both, may occur, be clarified."

Amendments. The 2003 amendment substituted "that" for "such" in the introductory paragraph of (b); inserted the subdivision designations in (b)(10); and added (b)(16).

20-10-1004. Prohibiting new admissions — Hearings and appeals.

(a) The Director of the Office of Long-Term Care may prohibit new admissions to a long-term care facility not in compliance due to a Class A violation until the Office of Long-Term Care determines the facility is in substantial compliance.

(b) If the director determines to prohibit admissions to a facility, he or she shall notify the administrator of the facility in writing, by certified mail or other means which gives actual notice, that the facility is prohibited from admitting any new residents due to a Class A violation and that the prohibition shall continue until the office makes a determination that the facility has corrected the deficiency and is in substantial compliance.

(c)(1) The facility may request an immediate hearing by written request to the Director of the Department of Health and Human Services.

(2) The department shall provide a fair and impartial hearing officer within ten (10) days of receipt of the request.

(3) Unless in conflict with this subsection, the procedure for hearings and appeals set forth in § 20-10-208 shall be followed.

History. Acts 1988 (4th Ex. Sess.), No. 17, § 1.

20-10-1005. Procedure for transfer or discharge of residents — Violations.

(a) The Office of Long-Term Care shall prescribe through rule or regulation the procedure for transfer or discharge of residents to be followed by long-term care facilities. The procedure shall include:

(1) Provisions for a written notice to be furnished to the resident, sponsor, and other appropriate parties thirty (30) days prior to any involuntary transfer or discharge and for regulations setting forth the following circumstances for which the written notice need not be furnished:

(A) The transfer or discharge is necessary to meet the resident's welfare, and the resident's welfare cannot be met in the facility;

(B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;

(C) The safety of individuals in the facility is endangered;

(D) The health of individuals in the facility would otherwise be endangered;

(E) The resident has failed, after reasonable and appropriate notice, to pay or to have paid under state-administered programs on the resident's behalf an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with federal and state laws and regulations; or

(F) The facility ceases to operate;

(2)(A) An appeals process for residents objecting to an involuntary transfer or discharge which places the burden of proof for justification of the transfer or discharge on the facility.

(B) The appeals process for objections to transfer or discharge shall include provisions for the resident or sponsor, within seven (7)

days upon receipt of the written notice of transfer or discharge, to file a written objection to the transfer.

(C) Unless otherwise agreed to by the parties:

(i) A hearing shall be scheduled within fourteen (14) days following the filing of the objection; and

(ii) A final determination shall be rendered within seven (7) days following the hearing; and

(3) The contents of the written notice, including a statement in clear and concise language of the appeal process to be followed by the resident and the time periods in which:

(A) The resident must request an appeal;

(B) The appeal must be heard; and

(C) The earliest date a transfer would be allowed if the decision is against the resident.

(b) A request for a hearing shall stay a transfer pending a final determination.

(c) If the facility prevails and the final determination is not rendered within seven (7) days of the conclusion of the hearing, the Department of Health and Human Services shall bear the cost of the resident's continued stay in the nursing facility until such time as the decision is rendered.

(d) The facility shall provide preparation and orientation to residents to ensure a safe and orderly transfer or discharge.

(e) Failure to comply with the transfer or discharge procedures as prescribed by the office shall be considered a Class B violation under § 20-10-205 for which civil penalties set forth in § 20-10-206 may be imposed.

History. Acts 1988 (4th Ex. Sess.), No. 17, § 1; 2001, No. 1763, § 1.

Amendments. The 2001 amendment added "Unless otherwise agreed to by the

parties" in (a)(2)(C) and (D); and inserted present (c), and redesignated the remaining subsections accordingly.

20-10-1006. Residents' councils — Staff coordinators — Family councils.

(a) The Office of Long-Term Care shall prescribe through rule or regulation the establishment of a residents' council within each long-term care facility. The residents' council's duties shall include, but need not be limited to:

(1) Review of procedures of the facility for implementation of resident's rights;

(2) Making recommendations for changes or additions in the facility's policies and procedures, including programming;

(3) Representing residents in their complaints to the office or any other person or agency; and

(4) Assisting in early identification of problems and orderly resolution of same.

(b)(1) The facility administrator shall designate a staff coordinator and designate space within the facility for the residents' council.

(2) The staff coordinator shall assist the council in scheduling regular meetings and preparing written reports of meetings for dissemination to all residents of the facility.

(3) The staff coordinator may be excluded from any meeting of the council.

(c) The office shall prescribe rules or regulations which encourage the establishment of family councils for residents' families to meet in the facility with the families of other residents. The office shall require each facility to inform residents' families of their right to establish a family council within the facility.

(d)(1) Failure to comply with the requirement of establishment and operation of a residents' council as prescribed by the office shall be considered a Class C violation under § 20-10-205 for which civil penalties set forth in § 20-10-206 may be imposed.

(2) Any appeal shall be under the procedure set forth in § 20-10-208.

History. Acts 1988 (4th Ex. Sess.), No. 17, § 1.

20-10-1007. Adverse action against residents prohibited — Violations.

(a) No long-term care facility owner, administrator, employee, or other representative shall discriminate, retaliate, or seek reprisal in any manner against a resident or employee of a long-term care facility who has initiated or participated in any proceeding provided in this subchapter.

(b) Any adverse action taken against a resident of a long-term care facility within one hundred twenty (120) days of the filing of a complaint or initiation of any action shall give rise to a rebuttable presumption that the action was taken by the owner, administrator, employee, or other representative in violation of subsection (a) of this section.

(c) Failure to comply with this section by any facility owner, administrator, employee, or other representative shall be considered a Class B violation under § 20-10-205 for which civil penalties set forth in § 20-10-206 may be imposed.

(d) Any appeal shall be under the procedure set forth in § 20-10-208.

History. Acts 1988 (4th Ex. Sess.), No. 17, § 1.

20-10-1008. Disposition of civil penalties.

All moneys received from the imposition of civil penalties levied by the state on long-term care facilities found to be out of compliance with the requirements of this subchapter shall be deposited in the Long-Term Care Trust Fund for uses as prescribed in § 20-10-209.

History. Acts 1988 (4th Ex. Sess.), No. 17, § 1.

20-10-1009. Right to rescind long-term care contracts.

For a fourteen-day period beginning on the date of entry into a long-term care facility, the resident shall have the right to rescind any contractual obligation into which he or she has entered and receive a full refund of any moneys transferred to the facility. If the resident entered the facility and received some benefit therefrom, the charges of the services provided shall be prorated and payment made only for the benefits conferred.

History. Acts 1989, No. 663, § 1.

20-10-1010. End-of-life treatment of long-term care residents.

(a) For residents suffering from a terminal condition as defined in § 20-17-201, facilities may withhold nutrition or hydration, or both, only pursuant to:

- (1) The directive or with the consent of the resident;
- (2) A validly executed declaration as defined in § 20-17-201; or
- (3) The instructions of a person authorized to execute a written request for another under § 20-17-214 if:

(A) The resident did not execute a declaration; and

(B) In the opinion of the attending physician, the resident is no longer able to make health care decisions for himself or herself; or

(4) The directions of an attorney-in-fact appointed under a validly executed durable power of attorney for health care as defined in § 20-13-104.

(b) For residents who are permanently unconscious as defined in § 20-17-201, facilities may withhold nutrition or hydration, or both, only pursuant to:

(1) A validly executed declaration as defined in § 20-17-201; or

(2) The instructions of a person authorized to execute a written request for another pursuant to § 20-17-214 if:

(A) The resident did not execute a declaration; and

(B) In the opinion of the attending physician, the resident is no longer able to make health care decisions for himself or herself; or

(3) The directions of an attorney-in-fact appointed under a validly executed durable power of attorney for health care as defined in § 20-13-104.

(c)(1) Notwithstanding subsections (a) and (b) of this section, the wishes of a resident who requests nutrition or hydration, or both, shall be honored.

(2) Unless the use of artificial means is specifically requested, a patient's request for nutrition or hydration, or both, shall not be honored by use of artificial means if doing so would require the insertion of any apparatus into the patient's body.

(d) The attending physician or other health care provider may not substitute his or her judgment relating to nutrition or hydration and make a decision that is contrary to the known wishes of the resident.

History. Acts 2003, No. 1322, § 7.

A.C.R.C. Notes. Acts 2003, No. 1322, § 6, provided: "Legislative purpose. (a)(1) The General Assembly recognizes that residents of long-term care facilities are among the most vulnerable of the state's citizens.

"(2) Further, the disproportionate number of these residents who are Medicaid eligible, and who have little or no close

family involvement in their lives, heightens their vulnerability.

"(b) It is the intent of the General Assembly that, to ensure proper care and treatment of these individuals, particularly at end-of-life, the circumstances and conditions under which the withholding of nutrition, hydration, or both, may occur, be clarified."

SUBCHAPTER 11 — NURSING HOME LICENSING

SECTION.

20-10-1101 — 20-10-1105. [Repealed.]

20-10-1101 — 20-10-1105. [Repealed.]

Publisher's Notes. Former subchapter 11, concerning nursing home licensing, was repealed by Acts 1993, No. 1238, § 9. The subchapter was derived from the following sources:

20-10-1101. Acts 1989, No. 986, § 1.

20-10-1102. Acts 1989, No. 986, § 1.

20-10-1103. Acts 1989, No. 986, § 1.

20-10-1104. Acts 1989, No. 986, § 1.

20-10-1105. Acts 1989, No. 986, § 1.

SUBCHAPTER 12 — PROTECTION OF LONG-TERM CARE FACILITY RESIDENTS

SECTION.

20-10-1201. Purpose.

20-10-1202. Definitions.

20-10-1203. Administration and management of long-term care facilities.

20-10-1204. Residents' rights.

20-10-1205. Property and personal affairs of residents.

SECTION.

20-10-1206. Right of entry and inspection.

20-10-1207. Availability, distribution, and posting of reports and records.

20-10-1208. Patient records — Penalties for alteration.

20-10-1209. Civil enforcement.

A.C.R.C. Notes. References to "this chapter" in §§ 20-10-101, 20-10-203, 20-10-204, and 20-10-207 might not apply to this subchapter which was enacted subsequently.

Effective Dates. Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act includes technical corrects to Act 923 of 2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and

Compensation Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid confusion this act must also become effective on July 1, 2003. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003."

Acts 2005, No. 2191, § 11: Apr. 13, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that various long-term care facilities are operating in this state without having obtained a li-

cense; that there is no state oversight or protection for the vulnerable residents in these facilities; and that there is no way of ensuring that the facilities properly treat and protect these residents under state long-term care laws. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and

safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

20-10-1201. Purpose.

The purpose of this subchapter is to provide for the development, establishment, and enforcement of basic standards for:

(1) The health, care, and treatment of persons in long-term care facilities; and

(2) The construction, maintenance, and operation of these facilities which will ensure safe, adequate, and appropriate care, treatment, and health of persons in the facilities.

History. Acts 1999, No. 1181, § 1.

CASE NOTES

Cited: Koch v. Northport Health Servs. of Ark., — Ark. —, — S.W.3d —, 2005 Ark. LEXIS 168 (Mar. 24, 2005).

20-10-1202. Definitions.

As used in this subchapter:

(1) "Administrator" means a person who administers, manages, supervises, or is in general administrative charge of a long-term care facility;

(2) "Bed reservation policy" means the number of consecutive days and the number of days per year that a resident may leave the long-term care facility for overnight therapeutic visits with family or friends or for hospitalization for an acute condition before the licensee may discharge the resident due to his or her absence from the facility;

(3) "Board" means the Long-Term Care Facility Advisory Board created by § 20-10-301;

(4) "Custodial service" means care for a person which entails observation of diet and sleeping habits and maintenance of a watchfulness over the general health, safety, and well-being of the person;

(5) "Department" means the Department of Health and Human Services;

(6) "Long-term care facility" means a nursing home, residential care facility, assisted living facility, post-acute head injury retraining and residential care facility, or any other facility which provides long-term medical or personal care but shall not include any facility which is conducted by and for those who rely exclusively upon treatment by

prayer alone for healing in accordance with the tenets or practices of any recognized religious denomination;

(7) "OLTC" means the Office of Long-Term Care created by § 20-10-202;

(8) "Ombudsman" means the Long-Term Care Ombudsman established pursuant to the Long-Term Care Ombudsman Act, § 20-10-601 et seq.;

(9) "Resident designee" means a person other than the owner, administrator, or employee of the facility designated in writing by a resident or a resident's guardian, if the resident is adjudicated incompetent, to be the resident's representative for a specific, limited purpose; and

(10) "Residential care plan" means a written plan developed, maintained, and reviewed not less than quarterly by a registered nurse, with participation from other facility staff and the resident or his or her designee or legal representative, which includes a comprehensive assessment of the needs of an individual resident, a listing of services provided within or outside the facility to meet those needs, and an explanation of service goals.

History. Acts 1999, No. 1181, § 2; 2005, No. 2191, § 7.

Amendments. The 2005 amendment inserted "assisted living facility" in (6).

20-10-1203. Administration and management of long-term care facilities.

Every licensed facility shall comply with all applicable standards and rules of the Office of Long-Term Care and shall:

(1) Be under the administrative direction and charge of a licensed administrator;

(2) Have available the regular, consultative, and emergency services of physicians licensed by the state and required by state and federal regulations;

(3) Provide for the access of the facility residents to dental and other health-related services, recreational services, rehabilitative services, and social work services appropriate to their needs and conditions and not directly furnished by the licensee;

(4)(A) If the facility was not cited for any deficiencies in the past twelve (12) months, be encouraged by the office to provide services, including, but not limited to, respite and adult day services, which enable individuals to move in and out of the facility. A facility is not subject to any additional licensure requirements for providing these services.

(B)(i) Respite care may be offered to persons in need of short-term or temporary long-term care services.

(ii) Respite care shall be provided in accordance with this subchapter and rules adopted by the office. However, the office, by rule, shall adopt modified requirements for resident assessment, resident care plans, resident contracts, physician orders, and other provisions, as

appropriate, for short-term or temporary long-term care services. The office shall allow for shared programming and staff in a facility which meets minimum standards and offers services pursuant to this subdivision (4)(B)(ii), but, if the facility is cited for deficiencies in quality of care, categories, or tags, may require additional staff and programs appropriate to the needs of service recipients.

(C)(i) A person who receives respite care may not be counted as a resident of the facility for purposes of the facility's licensed capacity unless that person receives twenty-four-hour respite care.

(ii) A person receiving either respite care for twenty-four (24) hours or longer or adult day services shall be included when calculating minimum staffing for the facility.

(D) Any costs and revenues generated by a facility from nonresidential programs or services shall be excluded from the calculations of Medicaid per diems for long-term care institutional care reimbursement;

(5) If the facility was not cited for any deficiencies in the last twelve (12) months, exceeds minimum staffing standards, and is part of a retirement community that offers other services pursuant to Part III, Part IV, or Part V, be allowed to share programming and staff;

(6) Maintain the facility premises and equipment and conduct its operations in a safe and sanitary manner;

(7)(A) If the licensee furnishes food service, provides a wholesome and nourishing diet sufficient to meet generally accepted standards of proper nutrition for its residents and provides such therapeutic diets as may be prescribed by attending physicians.

(B) In making rules to implement this subsection, the office shall be guided by standards recommended by nationally recognized professional groups and associations with knowledge of dietetics;

(8)(A) Keep full records of resident admissions and discharges, medical and general health status, including medical records, personal and social history, and identity and address of next of kin or other persons who may have responsibility for the affairs of the residents, and individual resident care plans, including, but not limited to, prescribed services, service frequency and duration, and service goals.

(B) The records shall be open to inspection by the office;

(9) Keep such fiscal records of its operations and conditions as may be necessary to provide information pursuant to this subchapter; and

(10)(A) Furnish copies of personnel records for employees affiliated with such a facility to any other facility licensed by this state requesting this information pursuant to this subchapter. The information contained in the records may include, but is not limited to, disciplinary matters and any reason for termination.

(B) Any facility releasing such records pursuant to this subchapter shall be considered to be acting in good faith and may not be held liable for information contained in such records, absent a showing that the facility maliciously falsified such records.

History. Acts 1999, No. 1181, § 6.

CASE NOTES

Cited: Northport Health Servs. v. Owens, 356 Ark. 630, 158 S.W.3d 164 (2004).

20-10-1204. Residents' rights.

(a) All long-term care facilities shall adopt and make public a statement of the rights and responsibilities of the residents of the facilities and shall treat the residents in accordance with the provisions of that statement. The statement shall assure each resident of the following:

(1) The right to be fully informed in writing and orally, prior to or at the time of admission and during his or her stay, of services available in the facility and of related charges for such services, including any charges for services not covered under Title XVIII or Title XIX of the Social Security Act or not covered by the basic per diem rates and of bed reservation and refund policies of the facility;

(2) The right to examine at any time the results which the facility shall post of the most recent inspection of the facility conducted by a federal or state agency and any plan of correction in effect with respect to the facility;

(3) The right to have copies of the rules and regulations of the facility and an explanation of the responsibility of the resident to obey all reasonable rules and regulations of the facility and to respect the personal rights and private property of the other residents;

(4)(A) The right to manage his or her own financial affairs or to delegate that responsibility to the licensee but only to the extent of the funds held in trust by the licensee for the resident.

(B) The facility may not require a resident to deposit personal funds with the facility.

(C) However, upon written authorization of a resident, the facility shall hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility as follows:

(i) The facility shall establish and maintain a system that ensures a full, complete, and separate accounting, according to generally accepted accounting principles or regulations established by the Office of Long-Term Care, of each resident's personal funds entrusted to the facility on the resident's behalf;

(ii) The accounting system established and maintained by the facility shall preclude any commingling of resident funds with facility funds or with the funds of any person other than a resident;

(iii) An annual accounting of any transaction made on behalf of the resident shall be furnished to the resident or the person responsible for the resident; and

(iv) The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under Title XVIII or Title XIX of the Social Security Act.

(D) An annual accounting of any transactions made on behalf of the resident shall be furnished to the resident or to the person responsible for the resident;

(5)(A) The right to freedom of choice in selecting a personal physician, to obtain pharmaceutical supplies and services from a pharmacy of the resident's choice, at the resident's own expense or through Title XIX of the Social Security Act, and to obtain information about and to participate in community-based activities programs, unless medically contraindicated as documented by a physician in the resident's medical record.

(B)(i) If a resident chooses to use a community pharmacy and if the facility in which the resident resides uses a unit-dose system, the pharmacy selected by the resident shall be one (1) that provides a compatible unit-dose system, provides service delivery, and stocks the drugs normally used by long-term care residents.

(ii) If a resident chooses to use a community unit-dose system and if the facility in which the resident resides does not use a unit-dose system, the pharmacy selected by the resident shall be one (1) that provides service delivery and stocks the drugs normally used by the long-term care residents;

(6) The right to be adequately informed of his or her medical condition and proposed treatment unless the resident is determined to be unable to provide informed consent under Arkansas law, the right to be fully informed in advance of any nonemergency changes in care or treatment that may affect the resident's well-being, and except with respect to a resident adjudged incompetent, the right to participate in the planning of all medical treatment, including the right to refuse medication and treatment unless otherwise indicated by the resident's physician and to know the consequences of such actions;

(7)(A) The right to refuse medication or treatment and to be informed of the consequences of such decisions unless determined unable to provide informed consent under state law. When the resident refuses medication or treatment, the facility shall notify the resident or the resident's legal representative of the consequences of such a decision and shall document the resident's decision in his or her medical record.

(B) The facility shall continue to provide other services the resident agrees to in accordance with the resident's care plan;

(8) The right to receive adequate and appropriate health care and protective and support services, including social services, mental health services, if available, planned recreational activities, and therapeutic and rehabilitative services consistent with the resident care plan, with established and recognized practice standards within the community, and with rules as adopted by the agency;

(9) The right to have privacy in treatment and in caring for personal needs, to close room doors and to have facility personnel knock before

entering the room except in the case of an emergency or unless medically contraindicated, and to security in storing and using personal possessions. Privacy of the resident's body shall be maintained during, but not limited to, toileting, bathing, and other activities of personal hygiene, except as needed for resident safety or assistance;

(10) The right to receive notice before the room of the resident in the facility is changed;

(11)(A) The right to be informed of the bed reservation policy for a hospitalization.

(B)(i) The facility shall inform a private-pay resident and his or her responsible party that his or her bed will be reserved for any single hospitalization for a period up to thirty (30) days, provided that the facility receives reimbursement.

(ii) Any resident who is a recipient of assistance under Title XIX of the Social Security Act or the resident's designee or legal representative shall be informed by the licensee that his or her bed for which there is Title XIX reimbursement available will be reserved up to five (5) days but that the bed will not be reserved if it is medically determined by a physician that the resident will not need it or will not be able to return to the facility or if the agency determines that the facility's occupancy rate ensures the availability of a bed for the resident.

(C) Notice shall be provided within twenty-four (24) hours of hospitalization;

(12)(A) The right to be transferred or discharged only for medical reasons or for the welfare of other residents and the right to be given reasonable advance notice of no less than thirty (30) days of any involuntary transfer or discharge, except in the case of an emergency as determined by a licensed professional on the staff of the facility or in the case of conflicting rules and regulations which govern Title XVIII or Title XIX of the Social Security Act.

(B) For nonpayment of a bill for care received, the resident shall be given thirty (30) days' advance notice.

(C)(i) A licensee certified to provide services under Title XIX of the Social Security Act may not transfer or discharge a resident solely because the source of payment for care changes.

(ii) Admission to a facility operated by a licensee may not be conditioned upon a waiver of such a right, and any document or provision in a document which purports to waive or preclude such a right is void and unenforceable.

(iii) Any licensee certified to provide services under Title XIX of the Social Security Act that obtains or attempts to obtain such a waiver of a resident's rights as established herein is subject to disciplinary action as provided in subdivision (a)(16)(A)(ii) of this section.

(D) The resident and the family or representative of the resident shall be consulted in choosing another facility;

(13) For residents of Medicaid-certified or Medicare-certified facilities, the right to challenge a decision by the facility to discharge or transfer the resident, as required under Title 42 C.F.R. Part 488.12;

(14)(A) The right to be free from mental and physical abuse, corporal punishment, extended involuntary seclusion, and from physical and chemical restraints, except those restraints authorized in writing by a physician for a specified and limited period of time or as are necessitated by an emergency.

(B)(i) In the case of an emergency, restraint may be applied only by a qualified licensed nurse who shall set forth in writing the circumstances requiring the use of restraint, and in the case of use of a chemical restraint, a physician shall be consulted immediately thereafter.

(ii) Restraints may not be used in lieu of staff supervision or merely for staff convenience, for punishment, or for reasons other than resident protection or safety;

(15)(A) The right to retain and use personal clothing and possessions as space permits unless to do so would infringe upon the rights of other residents or unless medically contraindicated as documented in the resident's medical record by a physician.

(B) If clothing is provided to the resident by the licensee, it shall be of reasonable fit;

(16)(A)(i) The right to private and uncensored communication, including, but not limited to, receiving and sending unopened correspondence, access to a telephone, visiting with any person of the resident's choice during visiting hours, provided that such visitors are not disruptive or dangerous, and overnight visitation outside the facility with family and friends in accordance with facility policies, physician orders, and Title XVIII and Title XIX of the Social Security Act regulations, without the resident's losing his or her bed. Facility visiting hours shall be flexible, taking into consideration special circumstances such as, but not limited to, out-of-town visitors and working relatives or friends.

(ii) Unless otherwise indicated in the resident care plan, the licensee shall with the consent of the resident and in accordance with policies approved by the agency permit recognized volunteer groups, representatives of community-based legal, social, mental health, and leisure programs, and members of the clergy access to the facility during visiting hours for the purpose of visiting with and providing services to any resident. Any entity or individual that provides health, social, legal, or other services to a resident has the right to have reasonable access to the resident.

(B) The resident has the right to deny or withdraw consent to access at any time by any entity or individual.

(C) Notwithstanding the visiting policy of the facility, the following individuals shall be permitted immediate access to the resident:

(i) Any representative of the federal or state government, including, but not limited to, representatives of the Department of Health and Human Services, any law enforcement officer, any ombudsman, and the resident's individual physician; and

(ii) Subject to the resident's right to deny or withdraw consent, immediate family or other relatives of the resident;

(17)(A)(i) The right to present grievances on behalf of himself or herself or others to the staff or administrator of the facility, to governmental officials, or to any other person, to recommend changes in policies and services to facility personnel, and to join with other residents or individuals within or outside the facility to work for improvements in resident care, freedom from restraint, interference, coercion, discrimination, or reprisal. This right includes access to ombudsmen and advocates and the right to be a member of, to be active in, and to associate with advocacy or special interest groups.

(ii) The facility shall allow any ombudsman to examine a resident's clinical records with the permission of the resident or the resident's legal representative and consistent with state law.

(B) The right also includes the right to prompt efforts by the facility to resolve resident grievances, including grievances with respect to the behavior of other residents;

(18) The right to organize and participate in resident groups in the facility and the right to have the resident's family meet in the facility with the families of other residents;

(19) The right to participate in social, religious, and community activities that do not interfere with the rights of other residents;

(20) The right to civil and religious liberties, including knowledge of available choices and the right to independent personal decisions which will not be infringed upon and the right to encouragement and assistance from the staff of the facility in the exercise of these rights; and

(21) The right to be treated courteously, fairly, and with the fullest measure of dignity and to receive a written statement and an oral explanation of the services provided by the licensee, including those required to be offered on an as-needed basis.

(b)(1)(A) The licensee for each long-term care facility shall orally inform the resident of the resident's rights and provide a copy of the statement required by subdivision (a)(20) of this section to each resident or the resident's legal representative at or before the resident's admission to a facility.

(B) The written statement of rights shall include a statement that a resident may file a complaint with the office or the ombudsman.

(C) The statement shall be in boldface type and shall include the name, address, and telephone numbers of the ombudsman and adult abuse registry where complaints may be lodged.

(2)(A) The licensee shall provide a copy of the residents' rights to each staff member of the facility.

(B) Each such licensee shall prepare a written plan and provide appropriate staff training to implement the provisions of this section.

(c)(1) Any violation of the residents' rights set forth in this section may constitute grounds for action by the office.

(2) In order to determine whether the licensee is adequately protecting residents' rights, the annual inspection of the facility shall include private informal conversations with a sample of residents to discuss

residents' experiences within the facility with respect to rights specified in this section and general compliance with standards and consultation with the ombudsman in the area in which the long-term care facility is located.

(d) Any person who submits or reports a complaint concerning a suspected violation of the residents' rights or concerning services or conditions in a facility or who testifies in any administrative or judicial proceeding arising from the complaint shall have immunity from civil liability thereof unless that person has acted in bad faith or with malicious purpose or if the court finds that there was a complete absence of a justiciable issue of either law or fact.

History. Acts 1999, No. 1181, § 3. section, are codified as 42 U.S.C. § 1395
U.S. Code. Titles XVIII and XIX of the et seq. and 42 U.S.C. § 1396 et seq.,
Social Security Act, referred to in this respectively.

CASE NOTES

Cited: Northport Health Servs. v. Owens, 356 Ark. 630, 158 S.W.3d 164 (2004).

20-10-1205. Property and personal affairs of residents.

(a)(1) The admission of a resident to a long-term care facility and his or her presence in the facility shall not confer on the facility or its owner, administrator, employees, or representatives any authority to manage, use, or dispose of any property of the resident, nor shall the admission or presence confer on any of the aforementioned persons any authority or responsibility for the personal affairs of the resident except that which may be necessary for the safety of the residents and the orderly management of the facility.

(2) No licensee, owner, administrator, employee, or representative thereof shall act as guardian, trustee, or conservator for any resident of the facility or any such resident's property unless the person is the resident's spouse or blood relative within the third degree of consanguinity or if so ordered by a court before July 30, 1999.

(b)(1) A licensee shall provide for the safekeeping of personal effects, funds, and other property of the resident in the facility.

(2) Whenever necessary for the protection of valuables or in order to avoid unreasonable responsibility therefor, the licensee may require that valuables be excluded or removed from the facility and kept at some place not subject to the control of the licensee.

(3) A licensee shall keep complete and accurate records of all funds and other effects and property of its residents received by it for safekeeping.

(4) Any funds or other property belonging to a resident that are received by a licensee shall be held in trust. Funds held in trust:

(A) Shall be kept separate from the funds and property of the facility;

(B) Shall be deposited into a bank, savings and loan association, trust company, or credit union located in this state and, if possible, located in the same county in which the facility is located;

(C) Shall not be represented as part of the assets of the facility on a financial statement; and

(D) Shall be used or otherwise expended only for the account of the resident.

(c)(1) The licensee may enter into a self-insurance agreement as specified in rules adopted by the Office of Long-Term Care.

(2) Funds contained in the pool shall run to any resident suffering financial loss as a result of the violation by the licensee of the provisions of this section. Such funds shall be awarded to any resident in an amount equal to the amount that the resident can establish by affidavit or other adequate evidence was deposited in trust with the licensee and which could not be paid to the resident within thirty (30) days of the resident's request.

(3)(A) The office shall promulgate rules with regard to the establishment, organization, and operation of such self-insurance pools.

(B) The rules shall include, but shall not be limited to, requirements for monetary reserves to be maintained by the self-insurers to assure their financial solvency.

(d)(1)(A) If at any time during the period for which a license is issued, a licensee that has not entered into a self-insurance agreement, as provided in subsection (c) of this section, is requested to provide safekeeping for the personal funds of a resident, the licensee shall notify the agency of the request and make application for a surety bond or for participation in a self-insurance agreement within seven (7) days of the request, exclusive of weekends and holidays.

(B) Copies of the application, along with written documentation of related correspondence with an insurance agency or group, shall be maintained by the licensee for review by the office and the ombudsman.

(2) Moneys or securities received as advance payment for care may not at any time exceed the cost of care for a six-month period.

(3) At least annually, the licensee shall furnish the resident and the guardian, trustee, or conservator, if any, for the resident a complete and verified statement of all funds and other property to which this subsection applies, detailing the amounts and items received, together with their sources and disposition. In any event, the licensee shall furnish such a statement annually and upon the discharge or transfer of a resident.

(e)(1)(A)(i) In the event of the death of a resident, a licensee within thirty (30) days of the resident's death shall provide an accounting and shall return all refunds and funds held in trust to the resident's personal representative, if one has been appointed at the time that the long-term care facility disburses such funds and, if not, to the resident's spouse or a beneficiary named in a beneficiary designation form provided by the long-term care facility to the resident.

(ii) No licensee, owner, administrator, employee, or representative of a long-term care facility shall be named as a beneficiary to a resident's funds.

(iii) A beneficiary designation form shall be completed only by the resident at the time of admission to a long-term care facility and in the presence of two (2) witnesses who shall affix their signatures to the form as witnesses.

(B) If the resident has no spouse or a named beneficiary or the person cannot be located, funds due to the resident shall be placed in an interest-bearing account in a bank, savings and loan association, trust company, or credit union located in this state and, if possible, located within the same county in which the facility is located. The funds shall not be represented as part of the assets of the facility on a financial statement, and the licensee shall maintain the account until such time as the trust funds are disbursed pursuant to the provisions of the Probate Code, § 28-1-101 et seq.

(2)(A) All other property of a deceased resident being held in trust by the licensee shall be returned to the resident's personal representative, if one has been appointed at the time that the facility disburses such property and, if not, to the resident's spouse or a beneficiary named in a beneficiary designation form provided by the facility to the resident.

(B) If the resident has no spouse or a named beneficiary or the person cannot be located, property being held is to be disbursed pursuant to the provisions of the Probate Code, § 28-1-101 et seq.

(f)(1) The trust funds and property of deceased residents shall be kept separately from the funds and the property of the licensee and from the funds and property of the residents of the facility.

(2)(A) The long-term care facility needs to maintain only one (1) account in which the trust funds amounting to less than one hundred dollars (\$100) of deceased residents are placed.

(B) However, it shall be the obligation of the long-term care facility to maintain adequate records to permit compilation of interest due each individual resident's account.

(3) Separate accounts shall be maintained with respect to trust funds of deceased residents equal to or in excess of one hundred dollars (\$100).

(4) Any other property of a deceased resident held in trust by a licensee which is not disbursed in accordance with the Probate Code, § 28-1-101 et seq., shall escheat to the state as provided by law.

History. Acts 1999, No. 1181, § 7; 2001, No. 928, § 1; 2003, No. 1473, § 36.

Amendments. The 2001 amendment redesignated former (e)(1)(A) as present (e)(1)(A)(i); substituted "a beneficiary" for

"adult next of kin" in (e)(1)(A)(i), (e)(1)(B), and (e)(2); added (e)(1)(A)(ii)-(iii); and made minor stylistic changes throughout.

The 2003 amendment inserted "to be" preceding "disbursed" in (e)(2)(B).

RESEARCH REFERENCES

UALR L.J. Survey of Legislation, 2001
Arkansas General Assembly, Public
Health and Welfare, 24 UALR L.J. 557.

20-10-1206. Right of entry and inspection.

(a)(1) The Department of Health and Human Services and any duly designated officer or employee thereof or an ombudsman shall have the right to enter upon and into the premises of any long-term care facility at any time in order to determine the state of compliance with this subchapter and the rules in force pursuant to this subchapter.

(2) The right of entry and inspection shall also extend to any premise which the agency has reason to believe is being operated or maintained as a facility without a license, but no such entry or inspection of any premises shall be made without the permission of the owner or person in charge thereof, unless an inspection order is first obtained from a circuit court upon a showing of reasonable cause to inspect that certain premises are being maintained and operated in violation of this subchapter and statutory licensure requirements.

(b) Any records of a long-term care facility determined by the Office of Long-Term Care to be necessary and essential to establish lawful compliance with any rules or standards shall be made available to the office on the premises of the facility, with the exception of quality assurance committee records.

History. Acts 1999, No. 1181, §§ 8, 9.

20-10-1207. Availability, distribution, and posting of reports and records.

(a) Within ten (10) days after the date of an annual inspection visit or within thirty (30) days after the date of any interim visit, the Office of Long-Term Care shall forward the results of all inspections of long-term care facilities to:

(1) The ombudsman in whose county the inspected facility is located; and

(2) At least one (1) public library or in the absence of a public library, the county clerk in the county in which the inspected facility is located.

(b) Every long-term care facility licensee shall:

(1) Post in a sufficient number of prominent positions in the facility so as to be accessible to all residents and to the general public the last inspection report or survey pertaining to the facility and issued by the office, with references to the page numbers of the full reports, noting any deficiencies found by the office and the actions taken by the licensee to rectify such deficiencies; and

(2) Upon request, provide to any person who has completed a written application with an intent to be admitted, to any resident of the long-term care facility, or to any relative, spouse, or guardian of the

person a copy of the last inspection report pertaining to the long-term care facility and issued by the agency, provided that the person requesting the report agrees to pay a reasonable charge to cover copying costs.

(c)(1) Each long-term care facility licensee shall maintain as public information, available upon request, records of inspection reports pertaining to that facility that have been filed with or issued by any governmental agency.

(2) Copies of the reports shall be retained in the records for not less than five (5) years after the date the reports are filed or issued.

History. Acts 1999, No. 1181, § 9.

20-10-1208. Patient records — Penalties for alteration.

(a) Any person who fraudulently alters, defaces, or falsifies any medical or other long-term care facility record or causes or procures any of these offenses to be committed commits a Class A misdemeanor.

(b) A conviction under this section is also grounds for restriction, suspension, or termination of license privileges for the person.

History. Acts 1999, No. 1181, § 5.

20-10-1209. Civil enforcement.

(a)(1) Any resident who is injured by a deprivation or infringement of his or her rights as specified in this subchapter may bring a cause of action against any licensee responsible for the deprivation or infringement.

(2) The action may be brought by the resident or his or her guardian or by the personal representative of the estate of a deceased resident.

(3) The action may be brought in any court of competent jurisdiction in the county in which the injury occurred or where the licensee is located to enforce such rights and to recover actual and punitive damages.

(4) The resident may seek to recover actual damages when there is a finding that an employee of the long-term care facility failed to do something which a reasonably careful person would do or did something which a reasonable person would not do under circumstances similar to those shown by the evidence in the case, which caused an injury due to an infringement or a deprivation of the resident's rights.

(5) No separate award of attorney's fees may be made by the court.

(b)(1) A licensee shall not be liable for the medical negligence of any physician rendering care or treatment to the resident, except for the services of a medical director as required in this subchapter.

(2) Nothing in this subsection shall be construed to protect a licensee from liability for failure to provide a resident with appropriate observation, assessment, nursing diagnosis, planning, intervention, and evaluation of care by nursing staff.

(c) For the purpose of this section, punitive damages may be awarded for conduct which is willful, wanton, gross or flagrant, reckless, or consciously indifferent to the rights of the resident.

History. Acts 1999, No. 1181, § 4.

SUBCHAPTER 13 — NURSING HOME RESIDENT AND EMPLOYEE IMMUNIZATION

SECTION.

20-10-1301. Title.

20-10-1302. Purpose.

20-10-1303. Definitions.

SECTION.

20-10-1304. Implementation.

20-10-1305. Exemptions.

A.C.R.C. Notes. References to “this chapter” in §§ 20-10-101, 20-10-203, 20-10-204, and 20-10-2007 might not apply to this subchapter which was enacted subsequently.

20-10-1301. Title.

This subchapter shall be known and may be cited as the “Nursing Home and Employee Immunization Act of 1999”.

History. Acts 1999, No. 1524, § 1.

20-10-1302. Purpose.

It is recognized that:

(1) The sixth leading cause of death in Arkansas is the combined diagnostic category of pneumonia and influenza;

(2) Approximately ninety percent (90%) of the pneumonia and influenza deaths are in those over sixty-five (65) years of age;

(3) The Centers for Disease Control and Prevention recommends that individuals over the age of sixty-five (65) years have annual flu shots and a pneumococcal vaccine one (1) time;

(4) The Centers for Disease Control and Prevention further suggests that consent for immunization be acquired at the time of nursing home admission;

(5) Current utilization of the flu shots by nursing home residents is approximately fifty percent (50%);

(6) The elderly living in an institutional setting, where disease may be more readily transmitted, are less protected than those living in the community; and

(7) The pneumococcal vaccine utilization by nursing home residents is approximately thirty percent (30%).

History. Acts 1999, No. 1524, § 2.

20-10-1303. Definitions.

As used in this subchapter:

(1) "Document" means evidence from a person's physician or health care provider in written format indicating the date and place when the individual received the influenza virus vaccine and the pneumococcal pneumonia vaccine;

(2) "Medically contraindicated" means either that the influenza or pneumococcal vaccines should not be administered to an individual because of a condition that individual has that will be detrimental to the individual's health if the individual receives either of the vaccines;

(3)(A) "Nursing home facilities" means facilities that include any building, structure, agency, institution, or place for the reception, accommodation, board, care, or treatment of two (2) or more individuals who because of physical or mental infirmity are unable to sufficiently or properly care for themselves and for which reception, accommodation, board, care, or treatment a charge is made.

(B) "Nursing home" shall not include the offices of private physicians and surgeons, residential health care facilities, hospitals, institutions operated by the federal government, any other similar facility where individuals reside, or any facility which is conducted by and for those who rely exclusively upon treatment by prayer alone for healing in accordance with the tenets or practices of any recognized religious denomination; and

(4) "Report" means to maintain a current list or roster of vaccine status for residents and employees and by December 1 of each year to provide that list to the Office of Long-Term Care.

History. Acts 1999, No. 1524, § 3.

20-10-1304. Implementation.

(a)(1)(A) The State Board of Health may promulgate rules and regulations to provide for the immunization against the influenza virus and pneumococcal disease as provided for in this subchapter.

(B) The Office of Long-Term Care shall be granted authority to enforce the rules and regulations.

(2) The board may also promulgate rules and regulations to provide for the immunization of other individuals and require other institutions and facilities to provide the immunizations provided for in this subchapter.

(b) Each nursing home facility in this state shall:

(1) Obtain consent from residents or their legal guardians upon admission to participate in all immunization programs that are conducted within the facility while that person is a resident of that facility, and not in violation of the resident's right to refuse treatment;

(2) As a condition of his or her employment, require each employee to participate in immunization programs conducted while they are employed at the facility, unless the employee meets the qualifications for exemptions as listed in § 20-10-1305; and

(3) Document and report annually immunizations against:

(A) Influenza virus for residents and full-time and part-time employees; and

(B) Pneumococcal disease for residents.

(c) Any nursing home facility which violates this subchapter shall be subject to suspension and revocation of its license.

(d) The Division of Health of the Department of Health and Human Services shall provide vaccines, supplies, and staff necessary for the immunizations of nursing home residents and employees as provided for in this subchapter.

History. Acts 1999, No. 1524, § 4.

20-10-1305. Exemptions.

All residents or full-time or part-time employees of nursing home facilities shall be immunized according to this subchapter with the following exemptions:

(1) No individual shall be required to receive either an influenza virus vaccine or a pneumococcal pneumonia vaccine if the vaccine is medically contraindicated as described in the product labeling approved by the federal Food and Drug Administration; and

(2) The provisions of this subchapter shall not apply if the resident or legal guardian objects on the ground that the immunization conflicts with the religious tenets and practices of a recognized church or religious denomination of which the resident or guardian is an adherent or member.

History. Acts 1999, No. 1524, § 5.

SUBCHAPTER 14 — STAFFING REQUIREMENTS FOR NURSING FACILITIES AND NURSING HOMES

SECTION.

20-10-1401. Definitions.

20-10-1402. Staffing standards.

20-10-1403. Ratio of staff to residents.

20-10-1404. Director of Nurses.

20-10-1405. Services provided.

20-10-1406. Posting of personnel numbers.

SECTION.

20-10-1407. Report.

20-10-1408. Penalties.

20-10-1409. Staffing standards.

20-10-1410. Cosmetology and barbering services.

A.C.R.C. Notes. References to “this chapter” in §§ 20-10-101, 20-10-203, 20-10-204, and 20-10-2007 might not apply to this subchapter which was enacted subsequently.

Effective Dates. Acts 1999, No. 1529, § 13: Apr. 15, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General As-

sembly that the provisions of this Act are of critical importance to preserve the efficient operation of programs that deliver services to the elderly citizens of the State of Arkansas. It is vital that we ensure that those persons in nursing facilities and nursing homes enjoy a high quality of life. The Department of Finance and Administration shall be required to make a deter-

mination on June 30, 1999 as to the funds available to administer the provisions of this Act. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act includes technical corrects to Act 923 of 2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and Compensation Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid confusion this act must also effective on July 1, 2003. Therefore, an emergency is

declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003."

Acts 2005, No. 2191, § 11: Apr. 13, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that various long-term care facilities are operating in this state without having obtained a license; that there is no state oversight or protection for the vulnerable residents in these facilities; and that there is no way of ensuring that the facilities properly treat and protect these residents under state long-term care laws. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

20-10-1401. Definitions.

As used in this subchapter:

- (1) "Day shift" means the period of 7:00 a.m. to 3:00 p.m.;
- (2)(A) "Direct-care staff" means any nurse aide or licensed nurse who provides direct, hands-on care to nursing facility residents.
- (B) "Direct-care staff" shall not include:
 - (i) Therapy personnel or personnel listed in § 20-10-1404; or
 - (ii) Medication assistive persons as defined in § 17-87-701;
- (3) "Evening shift" means the period of 3:00 p.m. to 11:00 p.m.;
- (4) "Midnight census" means the number of patients occupying nursing home beds in a nursing facility at midnight of each day;
- (5) "Night shift" means the period of 11:00 p.m. to 7:00 a.m.;
- (6) "Nurse aide" means any person who meets the requirements according to regulations adopted pursuant to 42 C.F.R. § 483.75(e), as it existed on January 1, 2005; and
- (7)(A) "Nursing facility" means any building, structure, agency, institution, or other place for the reception, accommodation, board, care, or treatment of more than three (3) unrelated individuals who, because of physical or mental infirmity, are unable to sufficiently or properly care for themselves, and for which reception, accommodation, board, care, and treatment a charge is made.
- (B) However, "nursing facility" shall not include:
 - (i) The offices of private physicians and surgeons;

- (ii) Residential care facilities;
- (iii) Assisted living facilities;
- (iv) Intermediate care facilities for the mentally retarded;
- (v) Hospitals;
- (vi) Institutions operated by the federal government or licensed by the Division of Developmental Disabilities Services of the Department of Health and Human Services; or
- (vii) Any facility that is conducted by and for those who rely exclusively upon treatment by prayer alone for healing in accordance with the tenets or practices of any recognized religious denomination.

History. Acts 1999, No. 1529, § 1; 2001, No. 1397, § 1; 2005, No. 1411, § 1; 2005, No. 1423, § 5; 2005, No. 2191, § 8.

Amendments. The 2001 amendment rewrote this section.

The 2005 amendments by 1411, in (2)(A), substituted “nurse aide or licensed nurse” for “licensed or certified nursing staff” and “nursing facility residents” for “residents in a nursing facility”; inserted present (6) and made related changes; redesignated former (6) as present (7);

deleted “or nursing home” following “facility” in (7)(A) and (B); and inserted the subdivision designations in (7)(B) and made related changes.

The 2005 amendment by 1423 inserted the subdivision (i) designation in (2)(B) and made related changes; and added (2)(B)(ii).

The 2005 amendment by 2191 substituted “residential care facilities, assisted living facilities” for “boarding homes, residential care facilities” in present (7)(B).

RESEARCH REFERENCES

UALR L.J. Survey of Legislation, 2001 Arkansas General Assembly, Public Health and Welfare, 24 UALR L.J. 557.

20-10-1402. Staffing standards.

(a) The Department of Health and Human Services shall not issue or renew a license of a nursing facility unless that facility employs the direct-care staff needed to provide continuous twenty-four-hour nursing care and service to meet the needs of each resident of the nursing facility and the staffing standards required by all state and federal regulations.

(b) The staffing standard required by this subchapter shall be the minimum number of direct-care staff required by nursing facilities and shall be adjusted upward to meet the care needs of residents.

(c) If a facility varies shift hours from the shift hours listed in § 20-10-1401, the facility shall meet the staffing requirements for the shift listed in § 20-10-1403.

History. Acts 1999, No. 1529, § 2; 2001, No. 1397, § 2; 2005, No. 1411, § 2.

Amendments. The 2001 amendment added (c).

The 2005 amendment, in (a), deleted “or nursing home” following “facility” and substituted “direct-care staff” for “nursing

personnel,” “resident of” for “resident in” and “staffing standards” for “standard of care as”; and, in (b), substituted “staffing standard” for “standard of care” and “number of direct-care staff” for “standard of care” and deleted “or nursing home” following “facility.”

20-10-1403. Ratio of staff to residents.

(a) All nursing facilities shall maintain the following minimum direct-care staffing to resident ratios:

(1) One (1) direct-care staff to every six (6) residents for the day shift. Of this direct-care staff, there shall be at least one (1) licensed nurse to every forty (40) residents;

(2) One (1) direct-care staff to every nine (9) residents for the evening shift. Of this direct-care staff, there shall be at least one (1) licensed nurse to every forty (40) residents; and

(3) One (1) direct-care staff to every fourteen (14) residents for the night shift. Of this direct-care staff, there shall be at least one (1) licensed nurse to every eighty (80) residents.

(b)(1) Licensed direct-care staff shall not be excluded from the computation of direct-care staff-to-resident ratios while serving in a staffing capacity that requires less education and training than is commensurate with their professional licensure.

(2) Licensed direct-care staff who serve in a staffing capacity that requires less education and training than is commensurate with their professional licensure shall not be restricted from providing direct-care services within the scope of their professional licensure in order to be included in the computation of direct-care staff-to-resident ratios.

(c) Nursing facilities shall provide in-service training to their direct-care staffs pursuant to regulations promulgated by the Office of Long-Term Care.

(d) Upon any expansion of resident census by the facility, the facility shall be exempt from any increase in staffing ratios for a period of nine (9) consecutive shifts from the date of the expansion of resident census.

(e)(1) The computation of the direct-care minimum staffing ratios shall be carried to the hundredth place.

(2) If the application of the ratios listed in subsections (a), (b), and (c) of this section results in other than a whole number of direct-care staff for a shift or shifts, the number of required direct-care staff shall be rounded to the next higher whole number when the resulting ratio, carried to the hundredth place, is fifty-one hundredths (.51) or higher.

(3) In no event shall a facility have fewer than one (1) licensed nurse per shift for direct-care staff.

(4) All computations shall be based on the midnight census for the day in which the shift or shifts begin.

(f)(1) Facilities may vary the starting hour and the ending hour for up to twenty-five percent (25%) of the minimum direct-care staff of the day shift or the evening shift, or both, to meet resident care needs.

(2) Before varying the starting hour and the ending hour of direct-care staff of the day shift or the evening shift, the facility shall inform the office in writing of:

(A) The resident care needs to be met by the change in starting and ending times of the shift;

(B) The number of direct-care staff to whom the changes will apply;

(C) The starting hour and ending hour of the shift for the direct-care staff to whom the change will apply; and

(D) The length of time the variations will be used, if known.

(3)(A) The facility shall receive written approval from the office before the facility may vary the starting hour and ending hour of a shift for selected direct-care staff.

(B) The office may deny approval upon determination that:

(i) The reason for the request to vary the starting and ending time of a shift for selected direct-care staff does not meet resident care needs;

(ii) The facility was in a pattern of failure for any month in the three (3) months immediately preceding the request; or

(iii) The variation will result in a period of more than two (2) hours in which there is less than the minimum required number of direct-care staff under subsection (a) of this section.

(C) The office may revoke approval to vary the starting and ending time of a shift for selected direct-care staff if the office determines that:

(i) The approval has resulted in resident care needs being unmet; or

(ii) The facility is in a pattern of failure.

(4) If a facility varies the starting and ending times for direct-care staff of the day shift or the evening shift, or both, the facility shall be deemed to have met minimum staffing requirements for that shift if the number of direct-care staff whose starting and ending times are varied and the number of direct-care staff whose starting and ending times are not varied together equal the number of direct-care staff required for the shift.

History. Acts 1999, No. 1529, § 3; 2001, No. 1397, § 3; 2003, No. 1473, § 37; 2005, No. 1411, § 3.

A.C.R.C. Notes. As amended by Acts 2005, No. 1411, subsection (a) began: "Effective October 1, 2003,".

Amendments. The 2001 amendment rewrote the section.

The 2003 amendment, in (b), substituted "June 30" for "June 20" and "staffing-to-resident" for "staffing to resident."

The 2005 amendment deleted former (a)

and (b); redesignated former (c), (d), (e), (f) and (g) as present (a), (c), (d), (e) and (e)(4); substituted "October 1" for "July 1" in present (a); inserted "at least" in present (a)(1)-(3); inserted present (b) and (f); substituted "their direct-care" for "its licensed and certified" in present (c); deleted "corresponding" preceding "increase" in present (d); substituted "direct-care staff" for "personnel" twice in present (e)(2); and substituted "nurse" for "personnel" in present (e)(3).

20-10-1404. Director of nurses.

(a) In addition to the minimum direct-care staffing ratios in § 20-10-1403, each nursing facility shall employ a registered nurse to serve as director of nurses.

(b)(1) The director shall be a full-time employee and shall be employed for no less than forty (40) hours per week.

(2) An additional registered nurse shall be employed for a minimum of sixteen (16) hours per week to ensure coverage seven (7) days a week.

History. Acts 1999, No. 1529, § 4; 2001, No. 1397, § 4.

Amendments. The 2001 amendment rewrote this section.

20-10-1405. Services provided.

(a) An employee designated as a member of the nursing staff shall not be required to provide services such as food preparation, housekeeping, laundry, or maintenance services except as necessary to maintain a safe and sanitary environment.

(b) Persons employed to provide additional services such as food preparation, housekeeping, laundry, or maintenance services shall not be counted in determining the staffing ratios required by this subchapter unless the persons are qualified to serve as and specifically scheduled in a direct-care capacity.

(c) A person employed to provide additional services shall count toward the direct-care staffing ratios only for the time in which the facility can document that the person provides direct-care services.

History. Acts 1999, No. 1529, § 5; 2005, No. 1411, § 4.

Amendments. The 2005 amendments inserted the subsection (a) and (b) designations; in (b), substituted “additional ser-

vices such as food preparation, housekeeping, laundry, or maintenance services” for “the additional services” and added “unless...direct-care capacity”; and added (c).

20-10-1406. Posting of personnel numbers.

(a) Each nursing facility shall post on each hall, wing, or corridor the number of direct-care staff on duty at each shift. The posting shall consist of a sign-in sheet to be signed by each staff member as the staff member reports to work, and the staff member shall indicate on the sheet the time of departure.

(b) The current number of residents on that unit shall be posted at the same place as the staffing report and filed with the staffing report for the same time period.

(c) This information shall be posted in a conspicuous place and in a manner which is visible and accessible to all residents, their families, caregivers, and visitors. These records shall be filed and saved by the nursing facility until the next survey, and these records shall be available for review by any interested person upon a written request.

History. Acts 1999, No. 1529, § 6; 2005, No. 1411, § 5.

Amendments. The 2005 amendment deleted “or nursing home” following “facil-

ity” in (a) and (c); and substituted “direct-care staff” for “licensed and unlicensed personnel” in (a).

20-10-1407. Report.

(a)(1) By the fifth day of each month, each nursing facility shall submit a written report of all shifts which failed to meet the minimum staffing requirements of this subchapter during the preceding month to the Office of Long-Term Care.

(2) Upon determination by the office that a pattern of failure to comply with the provisions of this subchapter has occurred, the nursing facility shall submit to the office on a monthly basis a report stating the nursing staff-to-resident ratios for each shift, in addition to the requirements set forth in subdivision (a)(1) of this section.

(3) Each nursing facility also shall submit copies of all daily staffing logs for the same months for any reports required under subdivision (a)(1) or subsection (b) of this section.

(b) The failure of a direct-care staff member or members to sign the posted sign-in sheet in accordance with § 20-10-1406 shall not be considered a violation of the staff-resident ratios set forth in § 20-10-1403 if the facility has other documentation that the staff member or members provided direct-care services for the dates and times stated by the facility.

(c) The failure to meet the requirement regarding the posting of current staff-resident ratios set forth in § 20-10-1406 or the failure to provide staffing reports, logs, or other documentation directly related to minimum staffing standards to the office or the Division of Medical Services of the Department of Health and Human Services is a Class C violation in accordance with § 20-10-206.

(d) "Pattern of failure" means that a facility did not meet the minimum staffing requirements of this subchapter for more than twenty percent (20%) of the total number of shifts for any one (1) month.

(e)(1) The division may perform staffing audits, including random staffing audits, of nursing facilities to determine and ensure compliance with the requirements of this subchapter.

(2) Facilities shall provide staffing reports, logs, or other documentation upon request of the division.

History. Acts 1999, No. 1529, § 7; 2001, No. 1397, § 5; 2005, No. 1411, § 6.

Amendments. The 2001 amendment rewrote the section.

The 2005 amendment deleted "or nursing home" following "facility" in (a); rewrote (b); substituted "other documenta-

tion directly related to minimum staffing standards" for "documentation" in (c); deleted former (e); redesignated former (f) as present (e); and, in present (e)(1), inserted "staffing" twice and deleted "or nursing homes" following "facility."

RESEARCH REFERENCES

UALR L.J. Survey of Legislation, 2001 Arkansas General Assembly, Public Health and Welfare, 24 UALR L.J. 557.

20-10-1408. Penalties.

(a) Upon a determination of a pattern of failure of a facility by the Office of Long-Term Care, the following penalties shall be applied to the facility:

(1) When the pattern of failure is more than twenty percent (20%) but less than twenty-five percent (25%) of the total number of shifts for

any one (1) month, the facility shall be assessed a fine of two thousand five hundred dollars (\$2,500);

(2) When the pattern of failure is twenty-five percent (25%) or higher but less than thirty percent (30%) of the total number of shifts for any one (1) month, the facility:

(A) Shall be assessed a fine of five thousand dollars (\$5,000); and

(B)(i) Shall be prohibited from admitting new residents for a period of at least two (2) weeks beginning the next business day after notification by the office to the facility of the pattern of failure and continuing until the next business day after the facility submits a report establishing that the facility was not in a pattern of failure for the time during which the facility was prohibited from admitting new residents.

(ii) If the office subsequently determines that the facility did not meet the minimum staffing standards requirements as alleged in the report from the facility, the office shall prohibit the facility from admitting new residents for a period of at least two (2) weeks, and continuing until the next business day after the facility submits a new report establishing that the facility was not in a pattern of failure for the time in which the facility was prohibited from admitting new residents;

(3) When the pattern of failure is thirty percent (30%) or higher of the total number of shifts for any one (1) month in a three-month reporting period, the facility:

(A) Shall be assessed a fine of seven thousand five hundred dollars (\$7,500); and

(B)(i) Shall be prohibited from admitting new residents for a period of at least two (2) weeks beginning the next business day after notification by the office to the facility of the pattern of failure and continuing until the next business day after the facility submits a report establishing that the facility was not in a pattern of failure for the time during which the facility was prohibited from admitting new residents.

(ii) If the office subsequently determines that the facility did not meet the minimum staffing standards requirements as alleged in the report from the facility, the office shall prohibit the facility from admitting new residents for a period of at least two (2) weeks and continuing until the next business day after the facility submits a new report establishing that the facility was not in a pattern of failure for the time in which the facility was prohibited from admitting new residents; and

(4) If after five (5) days' notice from the office of the imposition of a denial of new admissions a facility admits new residents during a period in which the facility is prohibited from admitting new residents, the facility shall be assessed a fine of twenty-five thousand dollars (\$25,000) per new resident admitted.

(b) The penalties stated in this subchapter are supplemental to any provisions in state or federal laws or regulations.

(c) Appeals from the imposition of any remedy imposed under this subchapter shall be made pursuant to § 20-10-208.

(d)(1) When residents are relocated from facilities due to natural disaster or as a result of state or federal action, the Department of Health and Human Services may waive some or all of the provisions of §§ 20-10-1403 and 20-10-1404 for facilities to which the residents are relocated.

(2) Any waiver shall be limited to no more than three (3) months from the date of transfer.

History. Acts 1999, No. 1529, § 8; 2001, No. 1397, § 6; 2005, No. 898, § 6; 2005, No. 1411, § 7.

Amendments. The 2001 amendment rewrote this section.

The 2005 amendment by No. 898 reded-

icated former (c)(1) as present (c); substituted "remedy imposed" for "monetary penalty" in present (c); and deleted former (c)(2).

The 2005 amendment by No. 1411 rewrote (a)(2)(B) and (a)(3)(B).

20-10-1409. Staffing standards.

(a) The staffing standards as set forth in § 20-10-1403 are to be construed as nursing facility staffing standards above the 1989 standards established by the Office of Long-Term Care.

(b)(1) If the Director of the Department of Health and Human Services determines that the reimbursement methodology or available funding is insufficient or unable to pay for the minimum staffing standards under § 20-10-1403, the office, by regulation, may modify the requirements of § 20-10-1403 to ensure minimum staffing funds.

(2) If the Director of the Office of Long-Term Care determines that the minimum staffing standards under § 20-10-1403 or § 20-10-1404 have become insufficient at any time to ensure the health, safety, or welfare of nursing facility residents, by regulation, the office may increase minimum staffing standards or otherwise promulgate regulations to ensure the health, safety, or welfare of the nursing facility residents.

(c)(1)(A) If the Director of the Office of Long-Term Care determines that minimum staffing standards should be increased pursuant to § 20-10-1409(b)(2), the Director of the Office of Long-Term Care shall certify the determination and any proposed regulatory increases to minimum staffing standards to the Director of the Division of Medical Services of the Department of Health and Human Services, who shall notify the Director of the Department of Health and Human Services and the Legislative Council of the determination and whether sufficient appropriated funds exist to fund the costs to be incurred by the proposed changes to the minimum staffing standards.

(B) As used in this subsection, "costs" means direct-care costs as defined in the Long-Term Care Provider Reimbursement Manual as in effect January 12, 2001.

(2) In no event shall minimum staffing standards be increased unless sufficient appropriated funds exist to fund the costs to be incurred by the proposed increases to minimum staffing standards.

History. Acts 1999, No. 1529, § 9; 2001, No. 1397, § 7; 2003, No. 1473, § 38; 2005, No. 1411, § 8.

Amendments. The 2001 amendment rewrote this section.

The 2003 amendment added (c)(1)(B); and, in present (c)(1)(A), deleted “as defined as direct-care costs by the Long-

Term Care Cost Reimbursement Methodology of the Long-Term Care Provider Reimbursement Manual as in effect January 12, 2001” following “costs” and made a stylistic change.

The 2005 amendment deleted “or nursing home” following “facility” twice in (b)(2).

20-10-1410. Cosmetology and barbering services.

(a)(1) Cosmetology and barbering services provided to residents of nursing facilities and for which a fee is charged that is separate from and additional to monthly facility charges shall be provided only by a licensed cosmetologist or registered barber, respectively.

(2)(A) Routine personal hygiene and related daily care services that are provided to residents of nursing facilities and for which the fee is included in the monthly facility charges may be provided by direct care staff who are trained, licensed, and certified through various state and federal regulatory agencies.

(B) With the exception of shampoos, conditioners, soaps, antiseptics, or similar items, routine personal hygiene and related daily care services shall not include the use of chemical or cosmetic preparations such as those used in permanent waving, bleaching, tinting, coloring, and dyeing.

(b)(1) A direct care staff member shall not be required to hold a license as a cosmetologist or barber in order to provide routine personal hygiene and related daily care services.

(2) Nursing facilities shall be exempt from the licensure requirements for cosmetological establishments under § 17-26-401 et seq.

(3) A relative of a resident of a nursing facility providing cosmetological services to a related resident of a nursing facility shall be exempt from the following:

(A) The licensure requirements for cosmetologists under § 17-26-301 et seq; and

(B) The registration requirements for barbers under § 17-20-301 et seq.

History. Acts 2003, No. 680, § 1.

Cross References. Definition of cosmetological establishment, § 17-26-102(a)(3).

Nursing facilities staff and relatives of residents exempt from the Cosmetology Act, § 17-26-103(a).

SUBCHAPTER 15 — ALZHEIMER’S SPECIAL CARE STANDARDS ACT

SECTION.

20-10-1501. Title.

20-10-1502. Legislative findings.

20-10-1503. Definition.

SECTION.

20-10-1504. Disclosure of treatment offered.

20-10-1505. Standards of care.

A.C.R.C. Notes. References to “this chapter” in §§ 20-10-101, 20-10-203, 20-10-204, and 20-10-2007 might not apply to this subchapter which was enacted subsequently.

20-10-1501. Title.

This subchapter shall be known and may be cited as the “Alzheimer’s Special Care Standards Act”.

History. Acts 1999, No. 484, § 1.

20-10-1502. Legislative findings.

The General Assembly finds and declares that:

(1) Certain long-term care facilities claim to provide special care units and services for persons who have Alzheimer’s disease or related dementia;

(2) It is in the public interest to provide for the protection of consumers regarding the accuracy and authenticity of the claims; and

(3) The provisions of this subchapter are intended to require such facilities to actually provide the care that they claim to offer, to require records of the claims to be kept, and to require the appropriate state licensing agency to examine their performance and provide penalties as the agency deems appropriate.

History. Acts 1999, No. 484, § 2; 2001, No. 500, § 1.

Amendments. The 2001 amendment redesignated former (a)-(c) as present (1)-(3); in (1), substituted “long-term care facilities” for “nursing homes and related

facilities, adult congregate living facilities, adult day care centers, hospices, and adult foster homes” and added “or related dementia” at the end; and substituted “the claims” for “such claims” in (2) and (3).

RESEARCH REFERENCES

UALR L.J. Survey of Legislation, 2001 Arkansas General Assembly, Public Health and Welfare, 24 UALR L.J. 557.

20-10-1503. Definition.

For the purposes of this subchapter, a long-term care facility has an Alzheimer’s special care unit if the long-term care facility advertises or otherwise holds itself out as having one (1) or more special units for residents with a diagnosis of probable Alzheimer’s disease or related dementia.

History. Acts 1999, No. 484, § 3; 2001, No. 500, § 2.

Amendments. The 2001 amendment rewrote this section.

20-10-1504. Disclosure of treatment offered.

(a)(1) Any facility having an Alzheimer's special care unit shall be required to disclose the form of care or treatment provided to or for persons with a diagnosis of probable Alzheimer's disease or related dementia.

(2) The disclosure shall be made to the Office of Long-Term Care and to any person or the person's guardian or relative seeking placement within an Alzheimer's special care unit. The office shall examine all such disclosures as part of the facility's license renewal procedure and verify their accuracy.

(b) Each disclosure shall explain the additional care provided in each of the following areas:

(1) Treatment philosophy: The Alzheimer's special care unit or program's written statement of its overall treatment philosophy and mission which reflects the needs of residents afflicted with dementia;

(2) Screening, admission, and discharge procedures, assessment, care planning and implementation, staffing patterns, and training ratios unique to the unit;

(3) Physical environment and design features appropriate to support the functioning of cognitively impaired adult residents;

(4) The frequency and types of resident activities;

(5) The involvement of families and the availability of family support programs; and

(6) The costs of care and any additional fees unique to the Alzheimer's special care unit or program.

(c)(1) If a facility having an Alzheimer's special care unit does not meet those specific standards established by the office, the office shall instruct the facility to immediately cease advertising or holding itself out as having one (1) or more special programs for residents with a diagnosis of probable Alzheimer's disease or related dementia.

(2) If the facility fails or refuses to comply with instructions from the office, the office may sue in the name of the state the facility and any owner, manager, or director of the facility to enjoin the facility from advertising or holding itself out as having one (1) or more special programs for residents with a diagnosis of probable Alzheimer's disease or related dementia.

History. Acts 1999, No. 484, § 4; 2001, No. 500, § 3.

Amendments. The 2001 amendment rewrote this section.

20-10-1505. Standards of care.

The Office of Long-Term Care shall establish and promulgate minimum standards for the care and treatment of persons with Alzheimer's disease and other dementia in such Alzheimer's special care units.

History. Acts 1999, No. 484, § 5.

SUBCHAPTER 16 — QUALITY ASSURANCE LEVY

SECTION.

20-10-1601. Definitions.

20-10-1602. Calculation of quality assurance fee.

SECTION.

20-10-1603. Reporting and collection.

20-10-1604. Administration.

20-10-1605. [Repealed.]

A.C.R.C. Notes. References to “this chapter” in §§ 20-10-101, 20-10-203, 20-10-204, and 20-10-2007 might not apply to this subchapter which was enacted subsequently.

Acts 2001, No. 635, § 5, provided: “If any section of this act or the application of this act shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair, or invalidate the remainder of this act, but shall be confined in its operation to the provision directly involved in the controversy in which the judgment shall have been rendered, and the applicability of the provision to other persons or circumstances shall not be affected.”

Acts 2001, No. 1292, § 1, provided: “The House Interim Committee and Senate Interim Committee on Public Health, Welfare, and Labor shall study the feasibility of including private intermediate care facilities for the mentally retarded and all residential programs licensed by the Division of Developmental Disabilities of The Department of Human Services among facilities affected by the quality assurance fee.”

Effective Dates. Acts 2001, No. 635, § 7: Mar. 9, 2001. Emergency clause provided: “It is found and determined by the General Assembly that nursing facilities are struggling to attain the resources necessary to provide persons in the nursing facilities with the proper services they rightfully deserve. The imposition of the fee will allow nursing facilities to provide quality patient care enhancements, and

therefore, ensure the safety of and a healthy environment for patients in nursing facilities. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2005, No. 2191, § 11: Apr. 13, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that various long-term care facilities are operating in this state without having obtained a license; that there is no state oversight or protection for the vulnerable residents in these facilities; and that there is no way of ensuring that the facilities properly treat and protect these residents under state long-term care laws. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

20-10-1601. Definitions.

As used in this subchapter:

(1) “Director” means the Director of the Division of Medical Services of the Department of Health and Human Services;

(2) “Division” means the Division of Medical Services of the Department of Health and Human Services;

(3)(A) "Gross receipts" means gross receipts paid as compensation for services provided to residents of nursing facilities, including, but not limited to, client participation.

(B) "Gross receipts" does not mean charitable contributions;

(4) "Medicaid" means the medical assistance program established by Title XIX of the Social Security Act, as it existed on January 1, 2001, and administered by the division;

(5) "Midnight census" means the count of: -

(A) Each patient occupying a nursing facility bed at midnight of each day;

(B) Those beds placed on hold during a period of time not to exceed five (5) consecutive calendar days during which a patient is in a hospital bed; and

(C) Those beds placed on hold during a period of time not to exceed fourteen (14) consecutive calendar days during which a patient is on therapeutic home leave;

(6) "Multiplier" means the fixed dollar amount used to calculate the quality assurance fee;

(7)(A) "Nursing facilities" means any buildings, structures, agencies, institutions, or other places which require payment for the reception, accommodation, board, care, or treatment of more than three (3) unrelated individuals who due to a physical or mental infirmity are unable to care for themselves.

(B) "Nursing facilities" does not mean offices of private physicians and surgeons, residential care facilities, assisted living facilities, intermediate care facilities for the mentally retarded, hospitals, institutions operated by the federal government or licensed by the Division of Developmental Disability Services of the Department of Health and Human Services, or any facility which is conducted by and for those who rely exclusively upon treatment by prayer for healing in accordance with tenets or practices of any recognized religious denomination; and

(8) "Patient days" means the number of patients in a nursing facility as determined by the midnight census.

History. Acts 2001, No. 635, § 1; 2005, No. 2191, § 9.

Amendments. The 2005 amendment, in (7)(B), deleted "boarding homes" and inserted "assisted living facilities."

U.S. Code. Title XIX of the Social Security Act, referred to in this section, is codified as 42 U.S.C. § 1396 et seq.

20-10-1602. Calculation of quality assurance fee.

(a) There is levied a quality assurance fee on nursing facilities to be calculated in accordance with subsection (b) of this section.

(b)(1) The quality assurance fee shall be an amount determined each month by multiplying by the multiplier the patient days as reported by each nursing facility for each day of the month.

(2) Each multiplier shall be:

(A) Calculated by the Division of Medical Services of the Department of Health and Human Services to produce an aggregate annual quality assurance fee payment equal to six percent (6%) of the aggregate annual gross receipts; and

(B) Subject to prospective adjustment as necessary for annual aggregate quality assurance payments to equal six percent (6%) of the aggregate annual gross receipts.

(c)(1) Between March 9, 2001, and June 30, 2001, the multiplier shall be five dollars and twenty-five cents (\$5.25).

(2)(A) On and after July 1, 2001, and annually thereafter, the multiplier shall be determined using the patient days and gross receipts reported to the division for a period of at least six (6) months and shall be annualized.

(B) The division shall determine the six-month period to be used in order to calculate the multiplier.

History. Acts 2001, No. 635, § 2.

20-10-1603. Reporting and collection.

(a) On the tenth day of the first full month following March 9, 2001, and on the tenth day of each month thereafter, each nursing facility shall file a report with the Division of Medical Services of the Department of Health and Human Services listing the patient days for the preceding month.

(b) The quality assurance fee shall be due and payable for the previous month by the thirtieth of each month.

(c) The payment of the quality assurance fee by the nursing facilities shall be reported as an allowable cost for Medicaid reimbursement purposes.

History. Acts 2001, No. 635, § 3.

20-10-1604. Administration.

(a) The administration of this subchapter shall be exercised by the Director of the Division of Medical Services of the Department of Health and Human Services and shall be subject to the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b)(1) In accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., the Division of Medical Services of the Department of Health and Human Services shall promulgate rules and regulations and prescribe forms for:

(A) The proper imposition and collection of the quality assurance fee;

(B)(i) The enforcement of this subchapter, including, but not limited to, license nonrenewal, letters of caution, sanctions, or fines.

(ii) The fine shall be at least ten thousand dollars (\$10,000) but no more than twenty thousand dollars (\$20,000). The fine and outstanding quality assurance fee shall accrue interest at the maximum rate

permitted by law from the date the quality assurance fee is due until payment of the quality assurance fee and the fine;

(C) The format for reporting by all nursing homes the total patient days and gross receipts; and

(D) The administration of the provisions of this subchapter.

(2) The rules and regulations shall not grant any exceptions to, or exceptions from, the quality assurance fee.

(c)(1) The quality assurance fee assessed and collected pursuant to this subchapter shall be assessed and deposited as a designated account within the Arkansas Medicaid Program Trust Fund.

(2) The designated account shall be separate and distinct from the general fund and shall be supplementary to the Arkansas Medicaid Program Trust Fund.

(3) Funds in the account derived from nursing facilities that are not operated by a governmental entity shall not be used to replace other general revenues appropriated and funded by the General Assembly or other revenues used to support Medicaid.

(4) This designated account shall be exempt from budgetary cuts, reductions, or eliminations caused by a deficiency of general revenues.

(5) Earnings on investments from this designated account shall remain a part of the designated account and shall not be deposited into the general fund.

(d)(1) Except as necessary to reimburse any funds borrowed to supplement funds in the designated account, the designated account moneys in the trust fund and the matching federal financial participation under Title XIX of the Social Security Act for expenditures from the Arkansas Medicaid Program Trust Fund shall be used only to reimburse additional costs paid to Medicaid-certified nursing facilities under Arkansas' State Medicaid Long-Term Care Cost Reimbursement Methodologies.

(2) No nursing facility shall be guaranteed, expressly or otherwise, that any additional moneys paid to the nursing facility will equal or exceed the amount of its quality assurance fee.

History. Acts 2001, No. 635, § 4.
U.S. Code. Title XIX of the Social Se-

curity Act, referred to in this section, is codified as 42 U.S.C. § 1396 et seq.

20-10-1605. [Repealed.]

Publisher's Notes. This section, concerning billing statements, was repealed

by Acts 2003, No. 746, § 1. The section was derived from Acts 2001, No. 635, § 6.

SUBCHAPTER 17 — ARKANSAS ASSISTED LIVING ACT

SECTION.	SECTION.
20-10-1701. Title.	20-10-1704. Assisted living program.
20-10-1702. Purpose and intent.	20-10-1705. Fees.
20-10-1703. Definitions.	20-10-1706. Reimbursement.

SECTION.

20-10-1707. Licensure.

20-10-1708. Limited licensure option.

SECTION.

20-10-1709. Permit of approval.

A.C.R.C. Notes. References to “this chapter” in §§ 20-10-101, 20-10-203, 20-10-204, and 20-10-2007 might not apply to this subchapter which was enacted subsequently.

Acts 2001, No. 1230, § 10: Apr. 2, 2001. Emergency clause provided: “It is hereby found and determined by the Eighty-third General Assembly that because of eligibility rules in the state’s Medicaid program many low to moderate income citizens are being prevented from accessing the most appropriate health care setting; that assisted living is being underutilized in Arkansas; that the current paperwork burden in the Medicaid personal care program discourages participation by

Medicaid providers; and that until this situation is changed, the citizens will be deprived of access to appropriate health care. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

20-10-1701. Title.

This subchapter shall be known as the “Arkansas Assisted Living Act”.

History. Acts 2001, No. 1230, § 1.

RESEARCH REFERENCES

UALR L.J. Survey of Legislation, 2001
Arkansas General Assembly, Public
Health and Welfare, 24 UALR L.J. 557.

20-10-1702. Purpose and intent.

(a) The purpose of this subchapter is to:

(1) Promote the availability of appropriate services for elderly persons and adults with disabilities in the least restrictive and most homelike environment;

(2) Encourage the development of facilities that promote the dignity, individuality, privacy, and decision-making ability of those persons;

(3) Provide for the health, safety, and welfare of residents of facilities offering assisted living services in the state;

(4) Promote continued improvement of those facilities;

(5) Include residential care facilities in the assisted living program;

(6) Encourage the development of innovative and affordable facilities particularly for persons with low to moderate incomes.

(b) The General Assembly recognizes that:

(1) Facilities offering assisted living services are a necessary part of the continuum of long-term care in the State of Arkansas;

(2) Facilities offering assisted living services should be operated and regulated as residential environments with supportive services and not as medical or nursing facilities;

(3) The services available in these facilities, either directly or through contract or agreement, are intended to help residents remain as independent as possible; and

(4) Residential care facilities have been providing many assisted living services for years and should be allowed to participate in the new assisted living program.

History. Acts 2001, No. 1230, § 2.

20-10-1703. Definitions.

As used in this subchapter:

(1)(A) "Assisted living facility" means any building or buildings, section or distinct part of a building, boarding home, home for the aged, or other residential facility, whether operated for profit or not, which undertakes through its ownership or management to provide assisted living services for a period exceeding twenty-four (24) hours to more than three (3) adult residents of the facility who are not relatives of the owner or administrator;

(B) "Assisted living facility" includes those facilities which provide assisted living services either directly or through contractual arrangements or which facilitate contracting in the name of residents;

(2) "Assisted living program" means a program of assisted living services;

(3) "Assisted living services" means housing, meals, laundry, socialization, transportation, one (1) or more personal services, and limited nursing services;

(4) "Department" means the Department of Health and Human Services and its divisions and offices;

(5)(A) "Limited nursing services" means acts that may be performed by licensed personnel while carrying out their professional duties, but limited to those acts that the department specifies by rule.

(B) Acts that may be specified by rule as allowable limited nursing services shall be for persons who meet the admission criteria established by the department for facilities offering assisted living services, shall not be complex enough to require twenty-four-hour nursing supervision, and may include such services as the application and care of routine dressings and care of casts, braces, and splints;

(6) "Person" means an individual, partnership, association, corporation, or other entity;

(7)(A) "Personal services" means assistance with or supervision of the activities of daily living and self-administration of medication and other similar services as the department may define by rule.

(B) "Personal services" shall not be construed to mean the provision of medical, dental, or alcohol and drug abuse treatment or mental health services; and

(8) "Twenty-four-hour nursing" means services that are ordered by a physician for a resident whose condition requires the supervision of a physician and continued monitoring of vital signs and physical status and whose condition is medically complex enough to require on-site nursing supervision on a twenty-four-hour per day basis.

History. Acts 2001, No. 1230, § 3.

20-10-1704. Assisted living program.

(a) The Department of Health and Human Services shall establish an assisted living program for adults, including those who meet the medical necessity determination for nursing facility care. However, such individuals cannot have conditions that require twenty-four-hour nursing.

(b)(1) The department shall promulgate rules and regulations not inconsistent with the provisions of this subchapter as it shall deem necessary or desirable to properly and efficiently carry out the purposes and intent of this subchapter.

(2) The regulations, including documentation, shall take into account the congregate nature of assisted living as opposed to individual settings, and the regulations shall include, but not be limited to:

(A) Fire, health, and life safety codes;

(B) Physical plant requirements, including space requirements for housing, toilet facilities, and related items;

(C) Staffing requirements; and

(D) Services requirements.

(c)(1) No resident shall be permitted to remain in an assisted living facility if his or her condition requires twenty-four-hour nursing care or other services that an assisted living facility is not authorized by law to provide.

(2) This prohibition shall apply even if the resident is willing to enter into an agreement to relieve the facility of responsibility or otherwise manage the risk.

(d) Upon application, residential care facilities licensed or holding a permit of approval as of April 2, 2001, and subsequent purchasers shall be licensed as assisted living facilities, provided that:

(1) The facility shall provide a small refrigerator in each resident's room, except as otherwise provided by regulation;

(2) The facility shall provide a microwave oven in each resident's room, except as otherwise provided by regulation;

(3) The facility meets minimum space requirements for resident rooms of one hundred fifty square feet (150 sq. ft.) per person or two hundred thirty square feet (230 sq. ft.) for two (2) persons sharing a room, exclusive of entryway, closet, and bathroom, or one hundred square feet (100 sq. ft.) per person or one hundred eighty square feet (180 sq. ft.) for two (2) persons if the room has a half or full bath or if there is a shared bathroom between two (2) rooms;

(4) The application conforms to all other assisted living regulations, except as provided in this subchapter; and

(5) Before obtaining the assisted living license, the residential care facility has no more than two (2) Class A or Class B violations pursuant to § 20-10-205 within the previous six (6) months.

(e) Residential care facilities which choose to become assisted living facilities under subsection (d) of this section shall not be required to meet physical plant or other physical amenities requirements beyond that required for residential care facilities as of January 1, 2001, except as provided in subsection (d) of this section.

(f) Assisted living regulations promulgated by the department shall be reasonable and shall not have the effect of excluding residential care facilities from entering the program, provided they meet the requirements of this subchapter.

(g)(1) The department shall take all actions necessary to develop a home and community-based care waiver application in accordance with § 1915(c) of the Social Security Act.

(2) The waiver application shall seek federal financial participation to increase access to services in assisted living facilities by raising Medicaid income and resource limits to the maximum eligibility level of other home and community-based waivers in effect.

(3) The waiver application shall seek permission to serve a minimum of one thousand (1,000) persons at a time and shall be submitted to the Centers for Medicare & Medicaid Services by June 30, 2001.

(4) The department's implementation of the waiver shall be reasonable and shall not have the effect of excluding residential care facilities which have become assisted living facilities under the provisions of this subchapter.

(h)(1) Residential care facilities that choose not to become assisted living facilities will be permitted to continue participating in the Medicaid personal care program.

(2) If an assisted living facility has Medicaid residents who are not in the waiver program but could qualify for nonwaiver Medicaid services, then the facility shall be permitted to provide Medicaid personal care for those residents.

(i) Assisted living services may be provided directly or through contractual arrangement.

History. Acts 2001, No. 1230, § 4.

U.S. Code. Section 1915(c) of the So-

cial Security Act, referred to in this section, is codified at 42 U.S.C. § 1396 et seq.

20-10-1705. Fees.

(a) The Department of Health and Human Services may charge fees which shall be paid by assisted living facilities to cover administrative costs associated with licensing, inspection, and the regulation of assisted living facilities.

(b) The department shall promulgate rules and regulations necessary for charging administrative fees.

History. Acts 2001, No. 1230, § 5.

20-10-1706. Reimbursement.

For Medicaid-eligible clients, the Department of Health and Human Services shall reimburse assisted living facilities on a per diem basis in accordance with approval for per diem reimbursement from the Centers for Medicare & Medicaid Services.

History. Acts 2001, No. 1230, § 6.

20-10-1707. Licensure.

(a)(1) Each assisted living facility in the State of Arkansas shall first obtain a license to operate from the Department of Health and Human Services.

(2) The department shall promulgate rules and regulations for the licensure and operation of assisted living facilities.

(b) Any person establishing, conducting, managing, or operating an assisted living facility within the meaning of this subchapter or using the term “assisted living” to promote the facility’s services without first having obtained an assisted living license shall be guilty of a Class A misdemeanor and upon conviction shall be subject to the penalties prescribed for a Class A misdemeanor. However, residential care facilities licensed or holding a permit of approval as of April 2, 2001, may use the term “assisted living” to promote their services.

(c) Each day that an assisted living facility shall operate after a first conviction shall be considered a Class D felony, and the person establishing, conducting, managing, or operating an assisted living facility upon conviction shall be subject to the penalties prescribed for a Class D felony.

History. Acts 2001, No. 1230, § 7.

20-10-1708. Limited licensure option.

A facility licensed as of April 2, 2001, and subsequent purchasers have the option of converting all or part of the facility to assisted living under § 20-10-1704(d) or choosing to remain licensed as a residential care facility.

History. Acts 2001, No. 1230, § 8.

20-10-1709. Permit of approval.

(a) Facilities offering assisted living services shall obtain a permit of approval. However, permits of approval held by residential care facilities as of April 2, 2001, or held by subsequent purchasers of those facilities, shall also be considered permits of approval for assisted living without further action. However, residential care facilities that choose to offer assisted living services are not exempted from assisted living licensure requirements except as provided in § 20-10-1704.

- (b)(1)(A) Provided, further, that in order to take advantage of a Robert Wood Johnson Foundation grant, one (1) new facility chosen by the Department of Health and Human Services may serve as a pilot project without the necessity of a permit of approval. This facility shall be exempt from the permit of approval process, provided that in 2001 it is awarded funding from the Coming Home Project and tax credits from the Arkansas Development Finance Authority.
- (B) The Coming Home Project means the Robert Wood Johnson Foundation/NCB Development Corporation grant.
- (2) The facility shall have no more than sixty (60) beds and shall serve a population a majority of which is low-income as defined by the Department of Housing and Urban Development.
- (3) The pilot project facility shall still meet all other licensure requirements.

History. Acts 2001, No. 1230, § 9.

SUBCHAPTER 18 — LONG-TERM CARE FACILITIES EMERGENCY GENERATOR
ACT OF 2001

SECTION.	SECTION.
20-10-1801. Title.	20-10-1803. Requirements.
20-10-1802. Definitions.	20-10-1804. Penalties.

A.C.R.C. Notes. Acts 2001, No. 1602, § 2: Apr. 13, 2001. Emergency clause provided: “It is found and determined by the General Assembly that the lack of emergency generator that will power critical nursing facility systems in the event of power outages, interruptions or loss of power, endanger the health, safety and welfare of nursing home residents, who are among the most vulnerable and physically at-risk citizens of the State of Arkansas. Therefore, an emergency is declared to exist and this act being

immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

20-10-1801. Title.

This subchapter shall be known and may be cited as the “Long-Term Care Facilities Emergency Generator Act of 2001”.

History. Acts 2001, No. 1602, § 1.

RESEARCH REFERENCES

UALR L.J. Survey of Legislation, 2001
Arkansas General Assembly, Public
Health and Welfare, 24 UALR L.J. 557.

20-10-1802. Definitions.

As used in this subchapter:

(1) "Areas of refuge" means any hallways, corridors, dining facilities, lobbies, reception areas, or community rooms designated by the nursing facility and approved by the Office of Long-Term Care;

(2) "Critical systems" means:

(A) Heating systems;

(B) Cooling systems;

(C) Call light or nurse call system;

(D) Illumination, heating and cooling, and life-support equipment or life-sustaining equipment in areas of refuge;

(E) Alarm systems, including fire and smoke alarms and fire extinguishing systems;

(F) Paging systems or speaker systems if intended for communication during an emergency;

(G) Life-sustaining equipment and life-support equipment;

(H) Refrigeration for medications and for food and liquids that require refrigeration;

(I) Continuous operation of telephone systems;

(J) Hot water circulation pumps and boiler rooms; and

(K) Elevators in facilities with elevators;

(3) "Existing facility" means a facility constructed or for which plans for construction have been approved by the Office of Long-Term Care, prior to April 13, 2001;

(4) "Facility" means a nursing facility or nursing home; and

(5) "New resident" means a person who has not been previously admitted to the nursing facility in the last fourteen (14) days.

History. Acts 2001, No. 1602, § 1.

20-10-1803. Requirements.

(a)(1) No later than six (6) months from April 13, 2001, each nursing facility or nursing home shall submit for approval to the Office of Long-Term Care plans prepared by a licensed architect, engineer, electrician, or individual deemed qualified by the manufacturer of the generator for the installation of an emergency generator sufficient to provide:

(A)(i) For existing facilities, power to critical systems for a period of no less than forty-eight (48) continuous hours in the event of interruption of normal power supplies.

(ii) However, nursing facilities are not required to provide heating or cooling to areas not designated and approved as areas of refuge; and

(B) For facilities constructed after April 13, 2001, power to all systems in the entire nursing facility that require electric power for operation for a period of no less than forty-eight (48) continuous hours in the event of interruption of normal power supplies:

(i) Facilities constructed after April 13, 2001, are not required to provide power to air conditioning systems to residents' rooms; and

(ii) Facilities constructed after April 13, 2001, are required to provide power to air conditioning systems for areas of refuge.

(2) By November 1, 2002, each facility shall either:

(A) Have the emergency generator installed and functioning; or

(B)(i) Have appropriate access for an emergency generator installed and functioning and have signed a lease agreement ensuring that the facility will have an approved emergency generator installed and functioning within eight (8) hours of an emergency electrical outage.

(ii) However, facilities shall provide emergency power to life-sustaining equipment and life-support equipment and to exit lighting immediately upon loss of normal or regular power supplies.

(3) If the office determines that a plan does not meet the requirements of this subchapter:

(A) The office shall notify the facility in writing that the plan is unacceptable and shall state the specific deficiencies in the plan; and

(B)(i) The facility shall submit a revised plan to the office within sixty (60) days of the date of the written notice.

(ii) The revised plan shall correct the deficiencies listed in the written notice to the office.

(4)(A) If a facility does not agree with the determination by the office that a plan is unacceptable, the facility may appeal the determination pursuant to § 20-10-303.

(B) However, the filing of an appeal shall not stay the requirements under subdivision (a)(2) of this section.

(b)(1) At least one (1) time a year, the facility shall have the system tested by a licensed engineer or other individual deemed qualified by the manufacturer of the generator to ensure that the system will operate as required in the event of loss of normal power.

(2) The facility shall retain a copy of the statement of the qualified professional attesting to the fitness of the system until the next licensure survey by the office.

(c)(1) The facility shall start the emergency generator at least one (1) time each month and shall ensure that the generator remains in proper operating condition.

(2) The facility shall perform all recommended and required maintenance and tests on the emergency system as specified by the manufacturer of the system or as recommended by the person or entity performing the installation.

(3) Until the next licensure survey by the office, the facility shall record and maintain a log of all maintenance performed by the facility and of each monthly start-up and the operating condition of the generator at each monthly start-up.

(d) Unless otherwise specified in this subchapter, the installation and maintenance of the generator shall meet the requirements specified in the National Fire Protection Association publications.

History. Acts 2001, No. 1602, § 1.

20-10-1804. Penalties.

(a) If a nursing facility or nursing home fails to comply with this subchapter, the following penalties may be applied to the facility:

(1) A fine not to exceed five thousand dollars (\$5,000) may be assessed by the Office of Long-Term Care for each month in which the facility fails to comply with any provision of this subchapter;

(2)(A) A fine not to exceed ten thousand dollars (\$10,000) may be assessed by the office for each calendar day during which a facility lacks electrical power if the outage continues for more than eight (8) consecutive hours.

(B) However, the fine may be imposed if the facility fails to provide emergency power for life-sustaining equipment or life-support equipment and to exit lighting immediately upon loss of normal or regular power supplies;

(3) In addition to any fine or other penalty, the facility may be prohibited from admitting new residents until the facility is in compliance with the requirements of this subchapter, as determined by the office;

(4) A fine not to exceed ten thousand dollars (\$10,000) may be assessed by the office for each new admission that occurs during a period in which new admissions are prohibited;

(5) Appeals from the imposition of any monetary penalty under this subchapter shall be made pursuant to § 20-10-208; and

(6) Appeals from the imposition of a denial of new admissions under this subchapter shall be made pursuant to § 20-10-303.

(b) Penalties allowed under this subchapter may be waived by the office for any existing facility that is scheduled to be replaced by a new facility which is under construction as of June 1, 2002.

(c) Penalties under this subchapter shall be waived when the generator is rendered inoperable due to natural disaster or other conditions beyond the control or authority of the facility and when the facility has taken reasonable actions to ensure the operation of the generator.

History. Acts 2001, No. 1602, § 1.

SUBCHAPTER 19 — DISPUTE RESOLUTION FOR LONG-TERM CARE FACILITIES

SECTION.	SECTION.
20-10-1901. Purpose.	resolution hearings —
20-10-1902. Definitions.	Submission of document-
20-10-1903. Agency to conduct the informal dispute resolution hearing.	ary evidence.
20-10-1904. Impartial decision maker — Qualifications.	20-10-1907. Informal dispute resolution hearing — Conduct.
20-10-1905. Request for an informal dispute resolution hearing.	20-10-1908. Determination of the impartial decision maker and the Office of Long-Term Care.
20-10-1906. Scheduling informal dispute	20-10-1909. Matters not subject to infor-

SECTION.

mal dispute resolution.

20-10-1910. Effect of a request for informal dispute resolution.

20-10-1901. Purpose.

(a) The General Assembly finds that this subchapter is necessary to provide an alternative process to formal judicial or administrative appeals of deficiencies for long-term care facilities as a means for faster, more efficient, and less expensive resolution of disputes concerning deficiencies cited against long-term care facilities.

(b) It is the intent of the General Assembly to provide a process supplemental to formal appeal that is both fair and impartial to all parties to address disputes between facilities and the Office of Long-Term Care when a deficiency is cited against a long-term care facility.

History. Acts 2003, No. 1108, § 1.

20-10-1902. Definitions.

As used in this subchapter:

(1) "Deficiency" means a violation or alleged violation by a long-term care facility of applicable state or federal laws, rules, or regulations governing the operation or licensure of a long-term care facility;

(2) "Deficiency tag number" means an alphanumeric designation of a deficiency by the Office of Long-Term Care that denotes the applicable state or federal rule, regulation, or law allegedly violated and that is used on the statement of deficiencies;

(3) "Impartial decision maker" means an individual employed by a state agency to conduct an informal dispute resolution hearing for the agency;

(4) "Informal dispute resolution" means a nonjudicial process or forum before an impartial decision maker that provides a facility cited for deficiency with the opportunity to dispute a citation for deficiency;

(5) "Long-term care facility" has the same meaning as under § 20-10-213;

(6) "Party" means a facility requesting an informal dispute resolution hearing or the office, or both;

(7) "State survey agency" means the office, the federally designated state entity that performs Medicaid and Medicare surveys and inspections of Arkansas long-term care facilities; and

(8)(A) "Statement of deficiencies" means a statement prepared by the office citing the applicable state or federal laws, rules, or regulations violated by a long-term care facility and the facts supporting the citation.

(B) A statement of deficiencies may also be referred to as a "2567".

History. Acts 2003, No. 1108, § 1.

20-10-1903. Agency to conduct the informal dispute resolution hearing.

(a) Informal dispute resolution hearings shall be conducted by the Division of Health of the Department of Health and Human Services.

(b) The division shall assign all informal dispute resolution hearings to the unit or section charged with performing survey or inspection activity for hospitals and hospital-based skilled nursing facilities.

History. Acts 2003, No. 1108, § 1.

20-10-1904. Impartial decision maker — Qualifications.

(a) The impartial decision maker may be an individual or a committee of individuals employed by the Division of Health of the Department of Health and Human Services.

(b)(1) An impartial decision maker shall be a nurse, a physician, a pharmacist, or any combination of nurses, physicians, or pharmacists, employed by the division.

(2) Each person acting as an impartial decision maker shall be licensed by the State of Arkansas by their respective licensing agencies or boards.

(c) All impartial decision makers shall undergo and complete surveyor training arranged by the Office of Long-Term Care.

History. Acts 2003, No. 1108, § 1.

20-10-1905. Request for an informal dispute resolution hearing.

(a) A facility that wishes to challenge a deficiency shall make a written request to the Division of Health of the Department of Health and Human Services within ten (10) calendar days of the receipt of the statement of deficiencies from the Office of Long-Term Care.

(b) The written request shall include:

(1) A list of all deficiencies that the facility wishes to challenge; and

(2) A statement indicating whether the facility wants the hearing to be conducted by telephone conference call, by record review of the impartial decision maker, or by a meeting in which the facility and the office appear before the impartial decision maker.

History. Acts 2003, No. 1108, § 1.

20-10-1906. Scheduling informal dispute resolution hearings — Submission of documentary evidence.

(a) Upon receipt of a request for an informal dispute resolution hearing from a facility, the Division of Health of the Department of Health and Human Services shall assign the matter to an impartial decision maker.

(b) The impartial decision maker shall:

(1) Schedule a time and date for a hearing; and

(2) Inform the parties of the time and date of the hearing.

(c) If the request for an informal dispute resolution hearing includes a request by the facility for a hearing at which the facility may appear before the impartial decision maker, the impartial decision maker shall:

(1) Arrange for facilities appropriate for conducting the hearing; and

(2) Inform the parties of the location of the facility.

(d)(1) Each party shall submit to the impartial decision maker all documentary evidence that the party believes has a bearing on or relevance to the deficiencies in dispute by the date specified by the impartial decision maker.

(2) Documentary evidence that is not submitted by the date specified by the impartial decision maker may be:

(A) Refused and not considered by the impartial decision maker; or

(B)(i) Accepted by the impartial decision maker.

(ii) If the evidence is accepted, the impartial decision maker shall provide the opposing party the opportunity to submit additional documentary evidence.

(iii) However, the additional evidence shall be limited to information that addresses or rebuts the documentary evidence submitted after the date specified by the impartial decision maker.

(e)(1) If the request for an informal dispute resolution hearing does not include a request by the facility for a hearing at which the facility may appear before the impartial decision maker, or upon agreement of the facility and the Office of Long-Term Care, the impartial decision maker may conduct the hearing by telephone conference call or by a review of documentary evidence submitted by the parties.

(2)(A) If the informal dispute resolution hearing is conducted by record review, the impartial hearing officer may request, and the parties shall provide, a written statement setting forth the parties' positions for accepting, rejecting, or modifying each deficiency in dispute.

(B) The written statement shall specify the documentary evidence that supports the position of each party for each deficiency in dispute.

(C) The facility shall provide its written statement to the impartial decision maker and the office.

(D) The office shall then provide its written statement in rebuttal to the impartial decision maker and the facility.

History. Acts 2003, No. 1108, § 1.

20-10-1907. Informal dispute resolution hearing — Conduct.

(a)(1) In all cases except record review, the facility shall present the initial arguments.

(2) The Office of Long-Term Care shall then present its arguments.

(b)(1) The hearing shall be limited to no more than two (2) hours in length, with each party being permitted one (1) hour to present its arguments.

(2) However, the impartial hearing officer may grant each party additional equal time for good cause as determined by the impartial decision maker.

(c)(1) Rules of evidence or procedure shall not apply except as provided in this section.

(2) The impartial decision maker may:

(A) Accept any information that the impartial decision maker deems material to the issue being presented; and

(B) Reject any information that the impartial decision maker deems immaterial to the issue being presented.

(d)(1) The hearing may not be recorded.

(2) However, the impartial decision maker may make written or recorded notes of the arguments.

(e) Only employees of the facility, attending physicians or residents of the facility at the time of the deficiency, pharmacists providing medications to residents of the facility at the time of the deficiency, and consultant pharmacists or nurse consultants utilized by the facility, or the medical director of the facility may appear or participate at the hearing for or on the behalf of the facility.

(f) Only employees of the office may appear or participate at the hearing for or on behalf of the office.

(g) No party may be represented by an attorney.

History. Acts 2003, No. 1108, § 1.

20-10-1908. Determination of the impartial decision maker and the Office of Long-Term Care.

(a)(1) Upon the conclusion of all arguments by the parties, the impartial decision maker shall issue a written statement of findings that shall be entitled "Determinations".

(2) This shall include:

(A) A recitation of the deficiency tag numbers;

(B) A statement of whether a disputed deficiency should remain, be removed, or be modified on the statement of deficiencies; and

(C) The facts and persuasive arguments that support the impartial decision maker's finding for each deficiency tag number.

(b)(1) The determination of the impartial decision maker shall be provided to the parties.

(2)(A) The Office of Long-Term Care shall review the determination and shall issue a written document entitled "State Survey Agency Determination".

(B) The state survey agency determination shall state:

(i) Whether, for each disputed deficiency mentioned in the impartial decision maker's determination, the finding of the impartial decision maker is accepted, rejected, or accepted as modified by the state survey agency;

(ii) For each deficiency finding by the impartial decision maker that the office does not accept the finding of the impartial decision

maker, a statement explaining the reasons that the finding was not accepted along with the facts, circumstances, or reasons for not accepting the finding; and

(iii) For each disputed deficiency finding of the impartial decision maker that the office accepts the finding with modification, a recitation of the modification and the reason or reasons for the modification.

(c) A state survey agency determination is not subject to appeal, reargument, or reconsideration.

(d) The office shall deliver a copy of the state survey agency determination to the facility and to the impartial decision maker.

(e)(1) In accordance with the state survey agency determination, the office shall issue an amended state of deficiencies if the state survey agency determination results in modification to any deficiencies cited in the original statement of deficiencies.

(2) If the office determines that amendments to the statement of deficiencies should result in changes to the scope or severity assigned to any deficiency, the amended statement of deficiencies shall reflect the changes to the scope or severity of any cited deficiency.

(f) The amended statement of deficiencies shall be provided to the facility.

History. Acts 2003, No. 1108, § 1.

20-10-1909. Matters not subject to informal dispute resolution.

(a)(1) The informal dispute resolution hearing is limited to deficiencies cited on a statement of deficiencies.

(2) No other issues may be addressed at an informal dispute resolution hearing, including, but not limited to:

(A) Scope and severity assessments of deficiencies unless the scope and severity assessments allege substandard quality of care or immediate jeopardy;

(B) Any remedies imposed;

(C) Any alleged failure of the survey team to comply with a requirement of the survey process;

(D) Any alleged inconsistency of the survey team in citing deficiencies among facilities; and

(E) Any alleged inadequacy or inaccuracy of the informal dispute resolution process.

(b) If the impartial decision maker finds that matters not subject to informal dispute resolution are presented, the impartial decision maker shall strike all documentary evidence related to or presented for the purpose of disputing the matter not subject to informal dispute resolution.

(c) The impartial decision maker may not include in the determination any matter not subject to informal dispute resolution.

History. Acts 2003, No. 1108, § 1.

20-10-1910. Effect of a request for informal dispute resolution.

A request for an informal dispute resolution shall not:

- (1) Stay any action for enforcement or imposition of remedies; or
- (2) Affect or preclude a facility’s right to judicial or administrative appeal.

History. Acts 2003, No. 1108, § 1.

SUBCHAPTER 20 — UNLICENSED LONG-TERM CARE FACILITIES ACT

SECTION.

- 20-10-2001. Title.
- 20-10-2002. Purpose.
- 20-10-2003. Definitions.
- 20-10-2004. Licensure.

SECTION.

- 20-10-2005. Existing unlicensed facilities.
- 20-10-2006. Application.
- 20-10-2007. Penalties and enforcement.

Effective Dates. Acts 2005, No. 2191, § 11: Apr. 13, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that various long-term care facilities are operating in this state without having obtained a license; that there is no state oversight or protection for the vulnerable residents in these facilities; and that there is no way of ensuring that the facilities properly treat and protect these residents under state long-term care laws.

Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

20-10-2001. Title.

This subchapter shall be known and may be cited as the “Unlicensed Long-Term Care Facilities Act”.

History. Acts 2005, No. 2191, § 10.

20-10-2002. Purpose.

The purpose of this subchapter is to protect the elderly and other vulnerable citizens of the State of Arkansas by ensuring that all facilities that offer assisted living or similar services are properly licensed and following the statutes and rules for long-term care facilities.

History. Acts 2005, No. 2191, § 10.

20-10-2003. Definitions.

As used in this subchapter:

- (1) “Assisted living facility” means the same as in § 20-10-1703;

(2) "Congregate services" means provision of group meals or any activities of daily living and instrumental activities of daily living provided in a group setting;

(3) "Department" means the Department of Health and Human Services and its divisions and offices;

(4) "Person" means an individual, partnership, association, corporation, or other entity;

(5) "Residential care facility" means the same as in § 20-10-101; and

(6) "Supervision" means that an assisted living facility or a residential care facility monitors the condition or status of the resident as related to medical or personal care while in the facility.

History. Acts 2005, No. 2191, § 10.

20-10-2004. Licensure.

(a) Any assisted living facility or residential care facility composed of a building or buildings, section, or distinct part of a building, whether operated for profit or not, shall be licensed as a long-term care facility by the Office of Long-Term Care if the facility:

(1) Houses more than three (3) individuals for a period exceeding twenty-four (24) hours;

(2) Provides meals or other congregate services; and

(3) Either:

(A) Provides supervision of residents; or

(B) Offers or provides assistance with activities of daily living, including, but not limited to:

(i) Eating;

(ii) Bathing;

(iii) Dressing;

(iv) Grooming;

(v) Ambulating;

(vi) Toileting; or

(vii) Taking medications.

(b) Facilities subject to the licensure requirement in subsection (a) of this section include those which:

(1) Provide services either directly or through contractual arrangements; or

(2)(A) Facilitate contracting in the name of the residents.

(B) Apartment house managers referring residents to home health or other service agencies are not facilitating contracting within the meaning of this subdivision (b)(2).

(c) No facility may advertise or publicly represent that it provides assisted living or residential care or use other similar terms unless it is licensed under Arkansas law as an assisted living facility or residential care facility.

History. Acts 2005, No. 2191, § 10.

20-10-2005. Existing unlicensed facilities.

(a) Assisted living facilities and residential care facilities that are unlicensed on April 13, 2005, shall have until March 15, 2006, in which to apply for an assisted living facility license or residential care facility license.

(b) Any assisted living facility or residential care facility that fails to become licensed on or before October 15, 2007, shall be subject to the provisions of § 20-10-2007.

(c)(1) An assisted living facility or residential care facility shall be exempt from the state permit-of-approval process for purposes of this section if the facility obtains a license within the time provided in subsection (b) of this section.

(2) After the time provided in subsection (b) of this section, the facility shall comply with the permit-of-approval process and methodology in all other respects.

(d) The Office of Long-Term Care shall report to the Health Services Permit Agency when a facility has been licensed without a state permit of approval under this section.

(e) The agency shall take account of the new beds in its counting for need purposes under the permit-of-approval methodology.

History. Acts 2005, No. 2191, § 10.

20-10-2006. Application.

(a) This subchapter shall not apply to situations in which persons in independent apartments receive home health services as with the “Meals on Wheels” program or other services by agencies such as the area agencies on aging but in which:

(1) Congregate services are not offered; and

(2) The situation is not advertised or publicly represented as assisted living, residential care, or a similar type of facility.

(b) As used in this section, “congregate services” does not include:

(1) Coordinating dining and social activities with a separately owned nonprofit senior citizen’s center; or

(2) Arrangements of other types between area agencies on aging and government-subsidized housing projects existing on April 13, 2005.

History. Acts 2005, No. 2191, § 10.

20-10-2007. Penalties and enforcement.

(a) Each person establishing, conducting, managing, constructing, or operating an assisted living facility or residential care facility without a license in violation of this subchapter or using the terms “assisted living”, “residential care”, or similar term to promote the facility’s services without first having obtained a license is subject to penalties under this chapter for operating an unlicensed long-term care facility.

(b) The Department of Health and Human Services shall have the same powers to enforce this subchapter as are authorized in § 20-10-215.

(c)(1) The department may enter and inspect suspected unlicensed assisted living or residential care facilities, including any combination of separate entities working in concert within the meaning of § 20-10-215 without first having secured a warrant.

(2) If a facility denies or refuses the department entry or denies, refuses, or interferes with inspection by the department, the department may apply for and shall be granted an injunction in the name of the state to prohibit the facility from operating until the department is permitted to enter and inspect the facility.

History. Acts 2005, No. 2191, § 10.

CHAPTER 11

ARKANSAS TUBERCULOSIS SANATORIUM. [REPEALED.]

Publisher's Notes. This chapter, concerning the Arkansas Tuberculosis Sanatorium, was repealed by Acts 2001, No. 1553, § 31. The chapter was derived from the following sections:

20-11-101. Acts 1909, No. 378, § 11, p. 1070; 1911, No. 433, §§ 3, 8; C. & M. Dig., §§ 9632, 9633; Pope's Dig., §§ 12613, 12621, 12622; A.S.A. 1947, §§ 7-312 — 7-314.

20-11-201. Acts 1909, No. 378, § 1, p. 1070; C. & M. Dig., § 9619; Pope's Dig., § 12607; A.S.A. 1947, § 7-301.

20-11-202. Acts 1909, No. 378, § 9, p. 1070; C. & M. Dig., § 9626; Pope's Dig., § 12615; A.S.A. 1947, § 7-307.

20-11-203. Acts 1909, No. 378, § 8, p. 1070; C. & M. Dig., § 9624; Pope's Dig., § 12612; Acts 1955, No. 177, § 1; A.S.A. 1947, § 7-306.

20-11-204. Acts 1939, No. 322, § 1; 1955, No. 177, § 2; A.S.A. 1947, § 7-316.

20-11-301. Acts 1909, No. 378, §§ 10, 11, p. 1070; 1911, No. 433, § 4; C. & M. Dig., §§ 9627, 9628, 9633; Pope's Dig., §§ 12616, 12617, 12622; Acts 1963, No. 271, § 2; A.S.A. 1947, §§ 7-308, 7-314.

20-11-302. Acts 1971, No. 51, § 1; A.S.A. 1947, § 7-332.

20-11-303. Acts 1961, No. 227, §§ 1-3; A.S.A. 1947, §§ 7-329 — 7-331.

20-11-304. Acts 1943, No. 158, §§ 2, 3; 1951, No. 146, § 1; A.S.A. 1947, §§ 7-325 — 7-327.

20-11-305. Acts 1959, No. 85, § 1; A.S.A. 1947, § 7-328.

20-11-401. Acts 1939, No. 322, § 2; A.S.A. 1947, § 7-317.

20-11-402. Acts 1913, No. 199, §§ 4, 5; C. & M. Dig., § 9625; Pope's Dig., § 12614; A.S.A. 1947, §§ 7-318, 7-318n.

20-11-403. Acts 1927, No. 14, §§ 1-6; Pope's Dig., §§ 12624-12629; A.S.A. 1947, §§ 7-319 — 7-324.

CHAPTER 12

RURAL MEDICAL SERVICES

SUBCHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]
2. RURAL MEDICAL CLINIC LOANS.

SUBCHAPTER.

3. FINANCIAL ASSISTANCE GRANTS. [REPEALED.]
4. RURAL HEALTH SERVICES REVOLVING FUND ACT.
5. PHYSICIAN RECRUITMENT AND RETENTION PROGRAM.
6. REPAYMENT OF FACULTY MEDICAL STUDENT LOANS.

A.C.R.C. Notes. Acts 2001, No. 549, §§ 1-12, provided: "SECTION 1. (a) The General Assembly finds that: (1) The State of Arkansas currently ranks fiftieth (50th) among the fifty (50) states for having the least healthy population; (2) A major contributing factor to the state's low health ranking is its high percentage of uninsured persons; (3) There is a significant gap in the state's health care 'safety net', especially with regard to working adults with low incomes; and (4) New relationships are needed between state government, local communities, public and private service agencies and uninsured persons in this state so that health care services for the uninsured will be more accessible, more affordable and more effective.

"(b) Therefore, there is established the Rural Health Access Pilot Program as a bridge connecting and assisting government, communities and citizens to build a more comprehensive and responsible health care system, which seeks to expand access and education with regard to health services for economically disadvantaged, uninsured, working adults.

"SECTION 2. Definitions. As used in this act: (1) 'Local', and words of similar import, means of, based in, located in, or primarily relating to the rural community to be served by the rural health access pilot program initiated by a rural health cooperative; (2) 'Medically underserved' means a designation made by the U.S. Health Resources and Services Administration in accordance with the following factors: (A) The percent of the population living below the federal poverty line; (B) The percent of the population that is sixty-five (65) years of age or older; (C) The infant mortality rate; and (D) The ratio of primary care physicians to the population; (3) 'Rural Community' means an unlimited number of geographically contiguous political subdivisions that are considered medically underserved and in which the total population does not exceed sixty

thousand (60,000) persons; (4) 'Rural Health Network' means a system organized by a rural health cooperative and at least three (3) separately-owned local health care providers or other entities that provide or support the delivery of health care services when such system is established and maintained as part of a rural health access pilot program and for the purpose of expanding access to health care in a rural community, coordinating the delivery of health care in a rural community or improving the quality of health care in a rural community; and (5) 'Rural Health Cooperative' means a non-profit corporation organized under the laws of this state that undertakes to establish, maintain, and operate a rural health access pilot program through a rural health network, or combination of networks, whereby hospital, medical, health education, and other health care services may be furnished by or through provider members of the rural health network to such of the uninsured residents of that rural community as become members of the rural health access pilot program under contracts which entitle each member to such services.

"SECTION 3. (a) A rural health access cooperative shall administer its program in a manner that: (1) Defines the population that may receive subsidized services provided through the program by limiting program eligibility to adults between the ages of eighteen (18) and sixty-five (65) who: (A) Are residents of the rural community being served by the rural health access pilot program; (B) Are without health care coverage; (C) Are not eligible for Medicare, Medicaid, Veterans Benefits, or other similar government programs; (D) Have an income not exceeding two hundred percent (200%) of the federal poverty guidelines for the State of Arkansas; and (E) Meet certain medical underwriting requirements established by the board of directors of the rural health cooperative; (2) Defines the population that

may receive unsubsidized services provided through the program by limiting program eligibility to adults between the ages of eighteen (18) and sixty-five (65) and their dependent children who: (A) Are residents of the rural community being served by the rural health access pilot program; (B) Are without health care coverage; (C) Are not eligible for Medicare, Medicaid, ARKids First, Veterans Benefits, or other similar government programs; (D) Have an income not exceeding three hundred percent (300%) of the federal poverty guidelines for the State of Arkansas or are a full-time employee of the rural health cooperative; and (E) Meet certain medical underwriting requirements established by the board of directors of the rural health cooperative; (3) Provides as a condition of eligibility for the automatic assignment to the rural health cooperative of medical payment due the client member of the rural health access program; (4) Defines the services to be covered under the rural health access program; and (5) Establishes co-payments for services received by client members of the rural health access program.

"(b) A rural health cooperative shall limit the total number of client members in a rural health access pilot program to a maximum of three thousand (3,000) eligible adults and eligible dependent children.

"(c) To promote the most efficient use of resources, rural health cooperatives shall emphasize in client member and provider member agreements disease prevention, early diagnosis and treatment of medical problems, and community care alternatives for individuals who would otherwise be at risk to be institutionalized.

"SECTION 4. Rural health cooperatives shall actively participate with Area Health Education Center programs, whenever feasible, in developing and implementing recruitment, training, and retention programs directed at positively influencing the supply and distribution of health care professionals serving in or receiving training in rural health network areas.

"SECTION 5. (a) The board of directors of a rural health cooperative shall include representatives of: (1) Administrators of hospitals that have contracted with the rural health cooperative as provider members to render hospital services to client

members of the rural health access program; (2) Physicians who have contracted with the rural health cooperative as provider members to render medical services to client members of the rural health access program; (3) Non-physician and non-hospital based health care providers or educators who have contracted with the rural health cooperative as provider members to render health services, health education and other similar services to client members of the rural health access program; and (4) The rural community, exclusive of provider representatives.

"(b) A rural health cooperative shall maintain an active advisory committee that includes representatives of client members of the rural health access pilot program.

"SECTION 6. A rural health cooperative shall have power to make donations for the public welfare or for charitable, scientific, or educational purposes, subject to such limitations, if any, as may be contained in its articles of incorporation or any amendment thereto.

"SECTION 7. (a) In order to demonstrate viability and effectiveness, a rural health cooperative shall collect data and make a report to the Senate and House Committees on Insurance and Commerce, Senate and House Committees on Public Health, Welfare and Labor, and Senate and House Committees on City, County, and Local Affairs.

"(b) Data shall include: (1) The results of client member surveys; (2) The results of provider member surveys; (3) The results of community need assessment surveys; and (4) Such other data as may be relevant to the rural health access program.

"(c) The report shall include recommendations with regard to criteria and priorities for improvement and expansion of the rural health access program.

"SECTION 8. No rural health cooperative shall be deemed to be engaged in the corporate practice of medicine.

"SECTION 9. No liability on the part of, and no cause of action of any nature shall arise against any member of the board of directors of a rural health cooperative or against an employee or agent of a rural health cooperative for any lawful action taken by them in the performance of their administrative powers and duties under this act.

"SECTION 10. (a) Rural health cooperatives shall not be considered or regulated as any type of entity governed by Title 23 of the Arkansas Code. None of the programs offered by a rural health cooperative shall be subject to regulation under Title 23 of the Arkansas Code.

"(b) Any entity subject to regulation under Title 23 of the Arkansas Code that contracts with a rural health cooperative to provide or to arrange for the provision of secondary or tertiary services to client members of a rural health access pilot program shall not be required to comply with any provision of Title 23 of the Arkansas Code that mandates the provision of certain benefits or mandates the provision of a certain level of benefits, or both, with regard to the client members of a rural health access pilot program.

"SECTION 11. This act shall automatically expire on June 30, 2003, unless a Medicaid Section 1115 waiver is granted for its continuation or unless extended by the General Assembly.

"SECTION 12. EMERGENCY CLAUSE. It is found and determined by the General Assembly that the availability of a continuum of quality health care services, including preventive, primary, secondary, tertiary, and long term care is essential to the economic and social vitality of rural communities; that in many rural communities access to such health care services is limited and the quality of health care services is negatively affected by inadequate financing, difficulty in recruiting and retaining skilled health professionals, and the migration of patients

to urban areas for general acute care and specialty services; that the efficient and effective delivery of health care services to the uninsured in rural areas requires the integration of public and private resources and the coordination of health care providers; that currently state statutory law does not provide the flexibility necessary to accomplish such integration and coordination in a cost-effective manner; that the ability to create rural health cooperatives to organize rural health networks can help to alleviate many of the problems identified with the delivery of quality health care in rural communities; that rural health cooperatives and their networks may serve as public 'laboratories' to determine the best way of organizing rural health services so that the state can move closer to ensuring that everyone has access to health care while promoting cost containment efforts; and the immediate passage of this act is necessary to provide a statutory framework for the establishment of rural health cooperatives to accomplish the objectives heretofore described. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

SUBCHAPTER 2 — RURAL MEDICAL CLINIC LOANS

SECTION.

20-12-201. Purpose.

20-12-202. Definitions.

SECTION.

20-12-203. Administration.

Effective Dates. Acts 1979, No. 1093,
§ 5: July 1, 1979.

20-12-201. Purpose.

(a) The General Assembly is cognizant of an extreme shortage in the rural areas of this state of obstetricians, gynecologists, general pediatricians, general internists, and family practice physicians.

(b)(1) The providing of incentives to attract and encourage obstetricians, gynecologists, general pediatricians, general internists, and family practice physicians to establish their practices within a rural area of this state is essential to the protection of the public health, welfare, and safety of the people of this state.

(2) By providing a source of low interest funds, the State of Arkansas can offer incentives to obstetricians, gynecologists, general pediatricians, general internists, and family practice physicians to establish medical clinics in rural areas to meet the medical needs of thousands of citizens of this state.

(c) The procedures set forth in this subchapter to provide loans to these medical practitioners in rural areas for the establishment of medical clinics are deemed to be in the public interest and essential to the preservation of the public health and safety in rural areas.

History. Acts 1979, No. 1093, § 3; A.S.A. 1947, § 82-4301; Acts 1993, No. 762, § 1.

20-12-202. Definitions.

As used in this subchapter:

(1) "Board" means the State Board of Finance;

(2) "Fund" means the Rural Medical Clinic Revolving Loan Fund;

(3) "Rural area" means any city, town, or other area having a population of fifteen thousand (15,000) inhabitants or less according to the 1990 Federal Decennial Census. The census from federal or state penal institutions, federal or state human service institutions, institutions of higher education, or any similar facility shall not be included in the census figure when defining a city, town, or other area under this subchapter; and

(4) "Rural medical clinic loans" means loans in sums not to exceed one hundred fifty thousand dollars (\$150,000) in the aggregate, to be used exclusively for land acquisition or for the construction, reconstruction, repair, or expansion of a building to be used as a medical clinic in a rural area and the acquisition and installation of equipment therein.

History. Acts 1979, No. 1093, § 1; A.S.A. 1947, § 82-4302; Acts 1993, No. 762, § 2; 1995, No. 1088, § 1.

20-12-203. Administration.

(a)(1) There is established on the books of the Treasurer of State, the Chief Fiscal Officer of the State, and the Auditor of State, a fund to be known as the "Rural Medical Clinic Revolving Loan Fund", which shall consist of moneys provided by law to be used solely and exclusively for the making of loans by the State Board of Finance, upon application therefor, for the construction and equipping of rural medical clinics in rural areas of this state.

(2) Loans for any one (1) medical practitioner or for the same rural medical clinic shall not exceed in the aggregate the sum of one hundred fifty thousand dollars (\$150,000).

(3) Loans shall be at five percent (5%) interest annually and shall not be for a period of more than ten (10) years.

(b) Before the loan may be made, the State Board of Finance shall determine:

(1) That the rural community in which the rural medical clinic is to be established through a loan made under this subchapter does not have adequate medical services available in the rural community;

(2) That the land, building, and equipment to be acquired, constructed, or renovated through the use of the loan funds are needed to meet the medical needs of the community in which it is to be established;

(3) That the medical practitioners seeking the loan have entered into an agreement with the State Board of Finance, which shall be a part of the loan application and agreement, if approved, to engage in medical practice in the rural medical clinic for the period for which the loan is applied; and

(4) That, if there are not adequate funds available to make loans for rural medical clinics applying for the loans, the State Board of Finance shall make the loans to those rural medical clinics which, in the opinion of the State Board of Finance, will meet the more critical rural medical needs of this state.

(c) Loans made under this subchapter shall be secured by a first lien mortgage on the lands and buildings to be acquired, constructed, or improved and upon the equipment to be installed therein to be used as a medical clinic in the rural area of this state.

(d) If any person obtaining a loan under this subchapter shall be delinquent in making two (2) payments due under the terms of the loan or shall cease to use the property or equipment for which the loan was provided as a medical clinic, the entire unpaid balance of the loan and all unpaid interest thereon shall be due and payable upon a determination of the facts by a court of competent jurisdiction.

(e) The State Board of Finance may make such reasonable rules and regulations and to prescribe such forms and procedures as are deemed appropriate to enable it to enforce this subchapter.

(f) In addition to such criteria as are established by the State Board of Finance, the State Board of Health may establish through rules and

regulations promulgated by the Division of Health of the Department of Health and Human Services criteria to implement the following requirements:

(1) That a person with an already established practice will not be considered an eligible applicant except under extreme circumstances threatening the continuance of his or her service to the rural community;

(2) That the applicant shall serve a proportionate amount of Medicaid patients for the rural community;

(3) That the applicant shall demonstrate a willingness to work within the existing health care system;

(4) That the applicant shall practice a minimum of thirty-two (32) hours a week; and

(5) That no applicant with professional income guarantees from other sources shall be approved under this program.

(g) The division shall develop criteria for evaluating medically underserved areas, which shall include, but not be limited to:

- (1) Infant mortality rate;
- (2) Poverty population percentage;
- (3) Population-to-primary-care-physician ratio; and
- (4) Teenage pregnancy rate.

History. Acts 1979, No. 1093, § 2; A.S.A. 1947, § 82-4303; Acts 1993, No. 762, § 3; 1995, No. 1088, § 2.

SUBCHAPTER 3 — FINANCIAL ASSISTANCE GRANTS

SECTION.
20-12-301 — 20-12-303. [Repealed.]

20-12-301 — 20-12-303. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 1993, No. 762, § 4. The subchapter was derived from the following sources:
20-12-301. Acts 1979, No. 1094, § 1; A.S.A. 1947, § 82-4304.

20-12-302. Acts 1979, No. 1094, § 2; A.S.A. 1947, § 82-4305.
20-12-303. Acts 1979, No. 1094, § 3; A.S.A. 1947, § 82-4306.

SUBCHAPTER 4 — RURAL HEALTH SERVICES REVOLVING FUND ACT

SECTION.
20-12-401. Title.
20-12-402. Duties.

SECTION.
20-12-403. Creation.
20-12-404. Matching.

Effective Dates. Acts 1989 (1st Ex. Sess.), No. 73, § 10; July 1, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh

General Assembly that the Rural Health Services are in dire need of matching funds so as not to work irreparable harm upon the proper administration of these

services. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1989."

Acts 1999, No. 590, § 5: Mar. 15, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that there is a pressing and immediate need for financial support in rural areas of Arkansas, that this act has as its purpose the furnishing of financial assistance to rural communi-

ties. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

20-12-401. Title.

This subchapter shall be known as the "Rural Health Services Revolving Fund Act".

History. Acts 1989 (1st Ex. Sess.), No. 73, § 1.

20-12-402. Duties.

(a) It shall be the responsibility of the Division of Health of the Department of Health and Human Services to promulgate all rules and regulations for making application for the matching funds required by this subchapter.

(b) It shall be further the responsibility of the division to review all applications and approve those that shall be eligible for moneys under the provisions of this subchapter and as may otherwise be provided by law.

History. Acts 1989 (1st Ex. Sess.), No. 73, § 2.

20-12-403. Creation.

There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State, a fund to be known as the "Rural Health Services Revolving Fund".

History. Acts 1989 (1st Ex. Sess.), No. 73, § 3.

Cross References. Rural Health Services Revolving Fund, § 19-5-1039.

20-12-404. Matching.

(a)(1) Funds requested by authority of this subchapter shall be matched on a cash basis of fifty to fifty (50:50) by the applicant.

(2) Applicants who have completed a community health needs assessment shall be eligible to match funds requested by authority of this

subchapter on a cash basis of twenty-five to seventy-five (25:75) by the applicant.

(b) The state portion shall at no time exceed two hundred thousand dollars (\$200,000) per county, local, commercial, or nonprofit operation.

(c) This match requirement does not apply to funds used by the Division of Health of the Department of Health and Human Services to administer this fund.

History. Acts 1989 (1st Ex. Sess.), No. 73, § 6; 1999, No. 590, § 1.

SUBCHAPTER 5 — PHYSICIAN RECRUITMENT AND RETENTION PROGRAM

SECTION.

20-12-501. Purpose — Grant established.

20-12-502. Administration by Division of Health of the Department

SECTION.

of Health and Human Services.

20-12-503. Eligibility.

Effective Dates. Acts 1991, No. 360, § 7: Mar. 5, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that many rural communities of the State are in dire need of physicians to supply adequate health care services, that many rural communities are having difficulty recruiting and retaining physicians to practice in their community, that financial incentive is necessary to help physicians locate in rural communities, and that enactment of this legislation will help provide incentive to physicians to locate in the rural communities of this State. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

Acts 1999, No. 589, § 7: approved Mar. 15, 1999. Emergency clause provided: "It

is hereby found and determined by the Eighty-second General Assembly that there is a pressing and immediate need for additional physicians in medically underserved rural areas in Arkansas; and this act has as its purpose the furnishing of financial assistance to physicians who have an interest and desire to engage in rural community practice in Arkansas and will so obligate themselves. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

20-12-501. Purpose — Grant established.

(a) It is the purpose and intent of this subchapter to establish a program of financial assistance to encourage physicians to locate in and remain in the practice of primary care medicine in communities of the state that have a population of not more than fifteen thousand (15,000) persons. It is the intent of the General Assembly that physicians who locate for a minimum of four (4) years in and carry on a full-time practice of family medicine in a priority medically underserved area as

defined by the Division of Health Facilities Services of the Division of Health of the Department of Health and Human Services after July 1, 1999, shall be entitled to receive grants totalling fifty-five thousand dollars (\$55,000) to be paid out over four (4) years. The first payment of twenty-five thousand dollars (\$25,000) shall be made when a practice is established by the physician in the community and patients are being seen in the office. The second, third, and fourth payments of ten thousand dollars (\$10,000) each shall be made after completion of each continuous year of service.

(b) It is further the intent of this subchapter that individuals who were assisted by the Arkansas Rural Medical Practice Student Loan and Scholarship Program or the Community Match Loan and Scholarship Program are also eligible for benefits under this program.

History. Acts 1991, No. 360, § 1; 1993, No. 763, § 1; 1995, No. 1089, § 1; 1999, No. 589, § 1.

20-12-502. Administration by Division of Health of the Department of Health and Human Services.

The program established in this subchapter shall be administered by the Division of Health of the Department of Health and Human Services. The division shall:

- (1) Accept applications for grants under this subchapter;
- (2) Determine the eligibility of applicants and grant or deny such grants from any funds available;
- (3) Adopt and enforce appropriate rules and regulations regarding forms to be used by applicants for grants, and eligibility of applicants, and such other rules and regulations as the division deems necessary or appropriate to carry out the purposes and intent of this subchapter and to prevent abuse of the program provided for in this subchapter; and
- (4) Develop criteria for evaluating medically underserved areas, which shall include, but not be limited to:
 - (A) Infant mortality rate;
 - (B) Poverty population percentage;
 - (C) Population-to-primary-care-physician ratio; and
 - (D) Teenage pregnancy rate.

History. Acts 1991, No. 360, § 3; 1993, No. 763, § 3; 1995, No. 1089, § 2.

20-12-503. Eligibility.

(a)(1) Any person licensed to practice medicine in this state who subsequent to July 1, 1999, establishes a full-time practice of family medicine in a community in Arkansas having a population of not more than fifteen thousand (15,000) persons as set forth in § 20-12-501, when that community is identified by the Division of Health of the Department of Health and Human Services as medically underserved

shall be eligible to make application for a grant under this subchapter in an amount described under § 20-12-501.

(2) Grants shall be awarded on the basis of available funds, with priority given to rural communities having the greatest need.

(3) Grant recipients shall enter into a contract to serve a proportionate number of Medicaid patients for the community, agree to work within the existing health care system, and practice a minimum of thirty-two (32) hours a week.

(b)(1) The division shall enter into a grant agreement with the recipient of a Rural Physician Incentive Grant.

(2) Each applicant to whom a grant is awarded shall execute a written grant agreement which shall incorporate the following obligations and conditions:

(A) The recipient of a grant shall commit to provide four (4) continuous years of primary care services in accordance with § 20-12-501;

(B)(i) If any grant recipient under this subchapter does not engage in the practice of primary care services in accordance with the terms of this section, the recipient shall be obligated to repay the grant received together with interest thereon at the maximum rate allowed by Arkansas law or the federal discount rate plus five percent (5%) per year whichever is less the interest to accrue from the date each payment of funds was received by the recipient.

(ii) No interest shall accrue nor obligation to repay the principal sums accrued during any one (1) period of time that the recipient involuntarily serves on active duty in the United States armed forces; and

(C) Repayment of principal with interest shall be due and payable in full at the earliest to occur of the following events:

(i) Failure to remain in the originating rural community for four (4) continuous years for any reason other than temporary personal illness; and

(ii) Failure to practice primary care on a regularly sustained basis as defined in § 20-12-501(a).

(c) Persons accepted into and participating in the Rural Physician Incentive Grant Program prior to July 1, 1999, will be eligible to complete the program under the payment system established when they entered the program.

History. Acts 1991, No. 360, § 2; 1993, No. 763, § 2; 1995, No. 1089, § 3; 1999, No. 589, § 3.

SUBCHAPTER 6 — REPAYMENT OF FACULTY MEDICAL STUDENT LOANS

SECTION.

20-12-601. Purpose.

20-12-602. Eligibility.

SECTION.

20-12-603. Financial assistance — Regulations.

20-12-601. Purpose.

It is the purpose and intent of this subchapter to establish a program of financial assistance to encourage primary care physicians to accept full-time faculty positions in a University of Arkansas for Medical Sciences area health education center community or at the Department of Family and Community Medicine within the University of Arkansas for Medical Sciences.

History. Acts 1993, No. 1107, § 1.

20-12-602. Eligibility.

(a) Board-eligible or board-certified family physicians and board-eligible or board-certified general pediatricians who join the full-time faculty at one (1) of the University of Arkansas for Medical Sciences area health education center family practice residency program training sites or at the Department of Family and Community Medicine within the University of Arkansas for Medical Sciences shall be eligible to receive financial assistance under this subchapter.

(b)(1) The University of Arkansas for Medical Sciences may provide financial assistance to eligible individuals for the repayment of medical student loans or personal loans made to or on behalf of a medical student.

(2) The amount of the financial assistance shall not exceed twelve thousand dollars (\$12,000) per year for each year of service.

(3) An individual shall not be eligible for assistance for more than four (4) years.

(c) If the loan is from the Rural Medical Practice Student Loan and Scholarship Program, the financial assistance shall be paid directly to the University of Arkansas for Medical Sciences and credited to the repayment of the loan.

History. Acts 1993, No. 1107, § 2.

20-12-603. Financial assistance — Regulations.

(a) Financial assistance under this subchapter shall be made by the University of Arkansas for Medical Sciences.

(b) The University of Arkansas for Medical Sciences shall adopt reasonable regulations for the administration of this subchapter.

History. Acts 1993, No. 1107, § 2.

CHAPTER 13**EMERGENCY MEDICAL SERVICES****SUBCHAPTER.**

1. GENERAL PROVISIONS.
2. EMERGENCY MEDICAL SERVICES ACT.
3. COUNTY PROGRAMS.

SUBCHAPTER.

4. INSECT STING EMERGENCY TREATMENT ACT.
5. POISON CONTROL — DRUG INFORMATION — TOXICOLOGICAL LABORATORY SERVICES.
6. NERVE AGENTS EMERGENCY TREATMENT ACT.
7. ARKANSAS POISON AND DRUG INFORMATION CENTER.
8. TRAUMA SYSTEM ACT.
9. ARKANSAS EMERGENCY MEDICAL SERVICES DO NOT RESUSCITATE ACT.
10. AMBULANCE SERVICES.
11. CRIMINAL RECORDS CHECK.
12. VACCINATION PROGRAM FOR FIRST RESPONDERS.
13. PUBLIC ACCESS TO AUTOMATED EXTERNAL DEFIBRILLATION ACT.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 20-13-101. Title.
- 20-13-102. Use of special terms or abbreviations without certificate unlawful.

SECTION.

- 20-13-103. Grant requests — Division and use of funds.
- 20-13-104. Durable power of attorney for health care.

Effective Dates. Acts 1979, No. 1090, § 9: July 1, 1979. Emergency clause provided: "It is hereby found and determined by the Seventy-Second General Assembly that the Emergency Medical Services Program of the Department of Health is in dire need of matching funds so as not to

work irreparable harm upon the proper administration of the program. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1979."

RESEARCH REFERENCES

ALR. Liability for injury or death allegedly caused by activities of hospital rescue team. 64 ALR 4th 1200.

Application of Firemen's rule to bar

recovery by emergency medical personnel injured in responding to or at scene of emergency. 89 ALR 4th 1079.

20-13-101. Title.

(a) This section shall be known as the "Emergency Medical Services Revolving Fund Act".

(b) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be designated the "Emergency Medical Services Revolving Fund".

(c)(1) It shall be the responsibility of the Division of Emergency Medical Services of the Division of Health of the Department of Health and Human Services to promulgate all rules and regulations for making application for the matching funds.

(2) It shall be the further responsibility of the division to review all applications and approve those that shall be eligible for moneys under the provisions of this section and as may otherwise be provided by law.

(d)(1) Funds requested by authority of this section shall be matched on a cash basis of fifty to fifty (50:50) by the applicant.

(2) The state portion shall at no time exceed ten thousand dollars (\$10,000) per county, local, commercial, or nonprofit operation, except that this limitation shall not apply when any county levies a motor vehicle tax to finance ambulance services as authorized by § 26-78-101 et seq.

(e) All moneys deposited into this fund pursuant to § 20-13-211 shall be used by the division for the following purposes:

- (1) Certification processing for emergency medical technicians;
- (2) Travel expenses related to the onsite administration of practical and written examinations of emergency medical technicians;
- (3) Maintenance of the emergency medical technician certification software program;
- (4) Educational programs for emergency medical technicians;
- (5) Continuing maintenance of the required EMT-Instructor certification for agency personnel; and
- (6) Other purposes consistent with this section.

History. Acts 1979, No. 1090, §§ 1-3, 6; A.S.A. 1947, §§ 82-3417 — 82-3420; Acts 2005, No. 648, § 2.

Amendments. The 2005 amendment added (e).

20-13-102. Use of special terms or abbreviations without certificate unlawful.

(a) It shall be unlawful for any person to practice or profess to be an emergency medical technician or to use the initials “EMT”, “EMT-A”, “EMT-P”, “EMT-I”, “EMT-Instructor”, or any other letters, words, abbreviations, or insignia indicating that he or she is an emergency medical technician without first having obtained from the Division of Health of the Department of Health and Human Services a certificate authorizing the person to practice emergency medical services in this state.

(b) However, nothing in this section shall be deemed to prohibit any person licensed under any other act in this state from engaging in the practice for which he or she is licensed nor to prevent students who are enrolled in accredited EMT, EMT-I, or EMT-P education programs from performing acts of emergency medical services incidental to their courses of study.

History. Acts 1985, No. 1001, § 6; A.S.A. 1947, § 82-3421.

1001, §§ 7 and 8 provided that nothing in the act repealed Acts 1981, No. 293, § 3 or

Publisher's Notes. Acts 1985, No. Acts 1981 (Ex. Sess.), No. 23.

20-13-103. Grant requests — Division and use of funds.

(a) Grant requests for funds from the Emergency Medical Services Enhancement Revolving Fund shall be reviewed by the Emergency Medical Services Advisory Council of the Division of Health of the Department of Health and Human Services specified in § 20-13-205 and recommendations for recipients of grant funds made to the Division

of Emergency Medical Services of the Division of Health of the Department of Health and Human Services.

(b)(1) The grant funds shall be evenly divided between the public, private, and volunteer sectors.

(2) For the purposes of this subsection, the public sector shall include only those applicants having paid employees.

(c) The grant funds may be used to purchase or fund:

(1) Ambulances for use in providing emergency medical services to the residents of Arkansas. Any ambulances purchased with these funds shall meet the standards for and be registered at the I-A level, or a higher level, by the division;

(2) Rescue vehicles for use in providing advanced life support or basic life support emergency care. Any vehicle purchased for advanced life support shall meet the standards and be registered at the advanced rescue level by the division;

(3) Equipment required on ambulances or required to provide advanced life support or basic life support rescue services;

(4)(A) Training that leads to Arkansas certification as an emergency medical technician at the basic or advanced levels.

(B) Failure to obtain certification shall result in the repayment of funds by the grantee; or

(5) Emergency medical services-related training approved by the division.

(d)(1) The funds may only be used to improve services by increasing the capability and skills of emergency medical services.

(2) Funds may not be used to maintain present status, pay salaries or daily operating expenses, contract for services, or purchase real property.

(e) The funds may not be used for new services at a lower level than an existing licensed service which has been in operation for more than one (1) year in the service area.

(f)(1) All property purchased with the funds shall be returned to the division if the licensed ambulance service ceases operations.

(2) The division shall make every effort to redistribute returned property and supplies to the replacement service or other eligible existing services within the same county.

(3) Should no eligible service exist or another eligible service not be established in the county within one (1) year, all purchases shall be redistributed by the division as needed.

(g)(1) Any vehicle or equipment purchased with these funds shall be used for its intended purpose for at least three (3) years from its date of purchase.

(2) Vehicles or equipment damaged or worn out within the three-year period shall be replaced with a like or better item at the grantee's expense.

History. Acts 1995, No. 1271, § 2.

Cross References. EMS Enhancement Revolving Fund, § 19-5-1078.

20-13-104. Durable power of attorney for health care.

(a) This section shall be known and may be cited as the “Durable Power of Attorney for Health Care Act”.

(b) The General Assembly recognizes the right of the individual to control all aspects of his or her personal care and medical treatment. However, if the individual becomes incapacitated, his or her right to control treatment may be denied unless the individual, as principal, can delegate the decision-making power to a trusted agent and be sure that the agent’s power to make personal and health care decisions for the principal will be effective to the same extent as though made by the principal.

(c)(1) As used in this section, “health care” means any care, treatment, service, or procedure to maintain, diagnose, treat, or provide for the patient’s physical or mental health or personal care.

(2) “Health care” shall not include decisions concerning life-sustaining treatment set forth in the Arkansas Rights of the Terminally Ill or Permanently Unconscious Act, § 20-17-201 et seq. However, a power of attorney for health care may contain the declaration set forth in § 20-17-202 relating to such life-sustaining treatments.

(d)(1) A person may execute a power of attorney for health care. The power of attorney may be durable.

(2) The health care agency shall be:

(A) In writing;

(B) Signed by the principal or by someone acting at the direction of the principal and in the principal’s presence; and

(C) Attested to by and subscribed in the presence of two (2) or more competent witnesses who are at least eighteen (18) years of age.

(3) An agent appointed under a power of attorney for health care shall take precedence over any person listed in § 20-9-602.

(e) This section does not in any way affect or invalidate any health care agency executed or any act of an agent prior to July 1, 1999, or affect any claim, right, or remedy that accrued prior to July 1, 1999. Nothing contained herein shall be interpreted or construed to alter or amend any provision of the Arkansas Rights of the Terminally Ill or Permanently Unconscious Act, § 20-17-201 et seq. The powers of a health care agent may be combined with a declaration made by a qualified patient under the Arkansas Rights of the Terminally Ill or Permanently Unconscious Act, § 20-17-201 et seq.

(f) This section is wholly independent of the provisions of the Probate Code, § 28-1-101 et seq., relating to wills, trusts, fiduciary relationships, and administration of estates, and nothing in this section shall be construed to affect in any way the provisions of the Probate Code, § 28-1-101 et seq.

(g) Nothing in this section shall be construed as authorizing or encouraging euthanasia, assisted suicide, suicide, or any action or

course of action that violates the criminal laws of this state or of the United States.

History. Acts 1999, No. 1448, §§ 1-8.

SUBCHAPTER 2 — EMERGENCY MEDICAL SERVICES ACT

SECTION.	SECTION.
20-13-201. Title.	20-13-208. State Board of Health — Powers and duties.
20-13-202. Definitions.	20-13-209. Division of Health of the Department of Health and Human Services — Powers and duties.
20-13-203. Applicability.	20-13-210. Rules, regulations, and standards — Review required.
20-13-204. Penalties.	20-13-211. Fees.
20-13-205. Emergency Medical Services Advisory Council — Creation — Members.	20-13-212. Additional fees.
20-13-206. Emergency Medical Services Advisory Council — Proceedings.	20-13-213. Ambulance standards.
20-13-207. Emergency Medical Services Advisory Council — Powers and duties.	20-13-214. Military emergency medical personnel.

Publisher's Notes. Acts 1985, No. 1001, §§ 7 and 8 provided that nothing in the act repealed Acts 1981, No. 293, § 3 or Acts 1981 (Ex. Sess.), No. 23.

Effective Dates. Acts 1975, No. 435, § 12: Mar. 17, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that the development of emergency medical services in this State is essential to the public health, safety, and welfare of the people of this State, and that the immediate implementation of the provisions of this Act is necessary to establish a program of Emergency Medical Services without undue delay. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1975 (Extended Sess., 1976), No. 1099, § 17: Jan. 30, 1976. Emergency clause provided: "It is hereby found and determined by the Seventieth General Assembly, meeting in Extended Session, that the immediate passage of this Act is necessary to prevent irreparable harm to the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public

peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1977, No. 889, § 39: July 1, 1977. Emergency clause provided: "It is hereby found and determined by the Seventy-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1977 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1977 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1977."

Acts 1987, No. 345, § 6: Mar. 20, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the development of standards for air ambulances is essential to the public health, safety and welfare of the people of this State; that this Act is designed to provide for the development of

such standards and that it is urgent that the provisions of this Act be implemented as soon as practical. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 1006, § 3: Apr. 14, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of the case *Ricarte v. State*, CR 86-31, a question has arisen over the validity of Act 1211 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on the issue. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 1021, § 3: Apr. 14, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of the case *Ricarte v. State*, CR 86-31, a question has arisen over the validity of Act 1099 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 179, § 38: Feb. 17, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint Interim Committee on Public Health, Welfare, and Labor and in its place established the House Interim Committee and Senate Interim Committee on Public Health, Welfare, and Labor; that various sections of the Arkansas Code refer to the Joint Interim Committee on Public Health, Welfare, and Labor and should be corrected to refer to the House and Senate Interim Committees on Public Health, Welfare, and Labor; that this act so provides; and that this act should go into effect immediately in order to make the

laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 60, § 6: Feb. 16, 1999. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law regulating ambulance services in this State is too narrow; that uncertified and poorly equipped ambulances are lawfully operating because the present law is too narrow; that such circumstances are to the detriment of the people who are being transported by those services; that this act addresses that problem by expanding its application to provide for the regulation of all vehicles used for transporting any person by stretcher or gurney upon the streets or highways of this State; and that until this act becomes effective, the people of this State will continue to unknowingly be subject to improper transport to or

from medical facilities in this State. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 1557, § 4: July 1, 2001. Emergency clause provided: "It is found and determined by the General Assembly that the Health Task force Commission expires June 30, 2003; that the commission must report to the Legislative Council by November 1, 2002; that in order to complete all its assigned task the commission must begin work by July 1, 2001. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 2001."

20-13-201. Title.

This subchapter may be cited as the "Emergency Medical Services Act".

History. Acts 1975, No. 435, § 1; A.S.A. 1947, § 82-3401.

20-13-202. Definitions.

As used in this subchapter:

(1) "Air ambulance" means an aircraft, fixed or rotary wing, utilized for on-scene responses or transports deemed necessary by a physician and licensed by the Division of Health of the Department of Health and Human Services;

(2) "Air ambulance services" means those services authorized and licensed by the division to provide care and air transportation of patients;

(3) "Ambulance" means a vehicle used for transporting any person by stretcher or gurney upon the streets or highways of Arkansas, excluding vehicles intended solely for personal use by immediate family members;

(4) "Ambulance services" means those services authorized and licensed by the division to provide care and transportation of patients upon the streets and highways of Arkansas;

(5) "Board" means the State Board of Health;

(6) "Certification" means official acknowledgment by the division that an individual has demonstrated competence to perform the emergency medical services required for certification, as provided in the rules, regulations, and standards adopted by the board upon recommendation by the Emergency Medical Services Advisory Council;

(7) "Council" means the Emergency Medical Services Advisory Council;

(8) "Division" means the Division of Health of the Department of Health and Human Services;

(9) "Emergency medical services" means:

(A) The transportation and medical care provided the ill or injured prior to arrival at a medical facility by a certified emergency medical technician or other health care provider; and

(B) Continuation of the initial emergency care within a medical facility subject to the approval of the medical staff and governing board of that facility;

(10) "Emergency medical technician" means an individual certified by the division at any level established by the rules and regulations promulgated by the board, as authorized in this subchapter, and authorized to perform those services set forth therein. These shall include, but not be limited to: "EMT", "EMT-A", "EMT-Instructor", "EMT-Paramedic", and "EMS-Communications"; and

(11) "Medical facility" means any hospital, medical clinic, physician's office, nursing home, or other health care facility.

History. Acts 1975, No. 435, § 2; 1981, A.S.A. 1947, § 82-3402; Acts 1987, No. 293, §§ 1, 2; 1985, No. 1001, § 1; 345, § 1; 1999, No. 60, § 1.

20-13-203. Applicability.

(a) All municipal, county, or state-operated rescue services which choose to provide advanced life support skills to the general public but which do not transport patients except in mass casualty incidents shall comply with all rules, regulations, and standards duly promulgated under this subchapter.

(b) Furthermore, it is the intent of this subchapter that nothing contained in it applies by implication or otherwise to any municipal, county, or state-operated or state-sponsored rescue service which provides basic life support skills to the public in a "treat, no transport" fashion.

History. Acts 1975, No. 435, § 2; 1981, No. 293, §§ 1, 2; 1985, No. 1001, § 1; A.S.A. 1947, § 82-3402.

20-13-204. Penalties.

Any person violating this subchapter or any rule, regulation, or order adopted in accordance with this subchapter shall be guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars (\$100) or by imprisonment for a period not to exceed thirty (30) days in the county jail, or by both fine and imprisonment.

History. Acts 1975, No. 435, § 9; A.S.A. 1947, § 82-3409.

20-13-205. Emergency Medical Services Advisory Council — Creation — Members.

(a) There is created the Emergency Medical Services Advisory Council, which shall consist of nineteen (19) members with a demonstrated

interest in emergency medical services, to be appointed by the Governor as follows:

(1) Four (4) members shall be licensed medical doctors of good professional standing. One (1) member shall be appointed representing each of the following areas:

(A) The Arkansas Chapter of the American College of Emergency Physicians;

(B) The Arkansas Academy of Family Physicians;

(C) The Arkansas Medical Society; and

(D) The medical director for a licensed paramedic ambulance service;

(2) One (1) member recommended by the Arkansas Hospital Association;

(3) One (1) member who shall be a member of the Arkansas Emergency Department Nurses Association;

(4) One (1) member who shall be a member of, and recommended by, the Arkansas Ambulance Owners and Operators' Association;

(5) One (1) member who shall be a certified EMT-Paramedic;

(6) One (1) member who shall be a certified EMT-Ambulance driver;

(7) One (1) member representing fire department-based ambulance services;

(8) One (1) member representing emergency medical technician training sites who shall have had at least five (5) years' experience associated with emergency medical technician training in this state;

(9) One (1) member who shall be a consumer representative who has an interest in public health and emergency medical services. The member shall be appointed by the Governor from the state at large;

(10) One (1) member who shall be sixty-five (65) years of age or more. This member shall be appointed by the Governor from the state at large and shall not belong to any other group specifically addressed in this section, with the exception of the consumer representative;

(11) One (1) member who shall represent city-based or county-based ambulance services;

(12) One (1) member who shall represent the Arkansas Association of Chiefs of Police or the Arkansas Sheriffs' Association;

(13) One (1) member representing fire service rescue operations which do not transport patients;

(14) One (1) member licensed as an attorney at law in good professional standing within this state and having a knowledge of medical and legal issues;

(15) One (1) member appointed from a list of two (2) nominees submitted by the Arkansas Emergency Medical Technician's Association; and

(16) One (1) member who shall be a certified military emergency medical technician.

(b) Members shall be appointed for terms of three (3) years.

(c) Vacancies on the council due to death, resignation, or other causes shall be filled by appointment by the Governor for the unexpired portion

of the term thereof in the same manner as is provided in this section for initial appointments.

(d) Members except those employed by the state may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(e) The members may be removed by the Governor for neglect of duty or malfeasance in office.

History. Acts 1975, No. 435, § 3; 1985, No. 1001, § 2; A.S.A. 1947, § 82-3403; Acts 1997, No. 250, § 182; 2001, No. 1557, § 3; 2005, No. 1228, § 1.

Publisher's Notes. Acts 1985, No. 1001, § 2 provided, in part, that members first appointed to the council would, at their first organizational meeting, determine by lot their respective terms in order that the terms of five members would be

for one year, the terms of four members would be for two years, and the terms of four members would be for three years.

Amendments. The 2001 amendment substituted "eighteen (18)" for "seventeen (17)" in (a); and added (a)(15) and made related changes.

The 2005 amendment substituted "nineteen (19)" for "eighteen (18)" in (a); and added (a)(16).

20-13-206. Emergency Medical Services Advisory Council — Proceedings.

(a) The Emergency Medical Services Advisory Council, within thirty (30) days after its appointment, shall organize as necessary to carry out its purposes as prescribed by this subchapter.

(b) Procedures adopted, amended, or repealed by the council shall require a majority vote of all council members.

(c)(1) At the initial organizational meeting of the council, the members shall elect from among their number a chair and a vice chair to serve for one (1) year.

(2) Annually thereafter, an organizational meeting shall be held to elect the officers.

(3) The Director of the Division of Emergency Medical Services of the Division of Health of the Department of Health and Human Services shall serve as the council's executive secretary.

(4) Seven (7) council members shall constitute a quorum.

(d) Quarterly meetings of the council may be held. Special meetings may be called as provided by the rules of the council.

(e)(1) The secretary of the council shall keep full and true records of all council proceedings and preserve all books, documents, and papers relating to the business of the council.

(2) The records of the council shall be open for inspection at all reasonable times.

(f) The council shall report in writing to the Governor on or about July 31 of each year. The report shall contain a summary of the proceedings of the council during the preceding fiscal year, a detailed and itemized statement of all revenue and of all expenditures made by or in behalf of the council, other information deemed necessary or useful, and any additional information which may be requested by the Governor.

History. Acts 1975, No. 435, § 4;
A.S.A. 1947, § 82-3404.

20-13-207. Emergency Medical Services Advisory Council — Powers and duties.

(a) The Emergency Medical Services Advisory Council shall recommend for adoption by the board rules, regulations, and standards on all matters relating to emergency medical services including, but not limited to:

(1) Standards for certification of ambulance and advanced life support rescue personnel;

(2) Standards for equipment required on ambulance and advanced life support rescue vehicles;

(3) Standards for vehicles used in patient transportation and advanced life support rescue response, including communications requirements;

(4) A statewide communications system for emergency medical services;

(5) Operational standards for providers of ambulance and advanced life support rescue services, including reporting requirements and standards for air ambulance and air ambulance services; and

(6) Procedures for summoning and dispatching aid.

(b) The Division of Health of the Department of Health and Human Services shall have evidence that the standards imposed are important to the quality of patient care.

History. Acts 1975, No. 435, § 5; 1985, No. 1001, § 3; A.S.A. 1947, § 82-3405; Acts 1987, No. 345, § 2; reen. 1987, No. 1006, § 1.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 1006, § 1. Acts

1987, No. 834, provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

20-13-208. State Board of Health — Powers and duties.

(a) The State Board of Health shall have the responsibility and authority to hold public hearings and promulgate and implement rules, regulations, and standards which it deems necessary to carry out the provisions of this subchapter. However, prior to implementing any rules, regulations, or standards, the board shall submit and obtain the review of the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor or appropriate subcommittees thereof.

(b) In addition, the board may establish appropriate rules, regulations, and standards defining or limiting the emergency medical procedures or services that may be rendered by a certified emergency medical technician who is authorized to legally perform these services under the conditions set forth by the board, except that prior to implementing any rules, regulations, and standards, the board shall submit and obtain the review of the House Interim Committee on Public Health, Welfare,

and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor or appropriate subcommittees thereof.

History. Acts 1975, No. 435, § 6; 1981, No. 293, § 3; A.S.A. 1947, § 82-3406; Acts 1997, No. 179, § 27.

20-13-209. Division of Health of the Department of Health and Human Services — Powers and duties.

The Division of Health of the Department of Health and Human Services shall have the responsibility and authority to:

- (1) Administer this subchapter;
- (2) Enforce the rules, regulations, and standards promulgated by the State Board of Health for the administration and enforcement of this subchapter;
- (3) Employ and prescribe the duties of employees as may be necessary to administer this subchapter;
- (4) Certify emergency medical technicians as defined in § 20-13-202 through use of a national competency examination by qualified examiners upon the completion of required curriculum;
- (5) Issue and renew operational permits for each ambulance or advanced life support rescue or air ambulance service. However, no permit shall be issued unless each ambulance, advanced life support rescue unit, or air ambulance, when in use as such, conforms with the standards, requirements, and regulations as set forth by the board;
- (6) Issue initial and renewal licenses to any qualified applicant that provides emergency medical services or advanced life support rescue services, whether the applicant is an individual, partnership, corporation, or other legal entity, as well as a municipality or other unit of government;
- (7) Assist area health planning in the establishment and operation of local, municipal, county, or district emergency medical services;
- (8) In addition to collecting fees pursuant to § 20-13-211, accept public and private gifts, grants, and donations for the purpose of administering this subchapter; and
- (9) Engage in the development of dispatching capabilities for emergency ambulance services in this state. The emergency medical services provider shall make a reasonable effort to see that a patient is taken to a physician or hospital of the patient's choice, if within a reasonable distance.

History. Acts 1975, No. 435, §§ 6-8; 5; A.S.A. 1947, §§ 82-3406 — 82-3408; 1981, No. 293, § 4; 1985, No. 1001, §§ 4, Acts 1987, No. 345, § 3.

20-13-210. Rules, regulations, and standards — Review required.

(a)(1) All rules, regulations, and standards relating to emergency medical services promulgated and adopted by the Emergency Medical

Services Advisory Council and the State Board of Health or any other state agency or department authorized to promulgate and adopt rules and regulations to carry out this subchapter shall be submitted to the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor or appropriate subcommittees thereof for consideration and review prior to being placed in effect by the department or agency.

(2) No rules, regulations, or standards promulgated to carry out this subchapter shall be enforced by any state agency or department until they have been submitted to, considered, and approved for enforcement by the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor.

(b)(1) Rules and regulations promulgated by the council shall receive approval of the Governor after he or she receives the review of the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor or appropriate subcommittees thereof prior to effect and enforcement.

(2) The rules and regulations shall be of a temporary nature, and no rules or regulations shall become final until specifically approved by the General Assembly.

History. Acts 1975 (Extended Sess., 1976), No. 1099, § 13; 1977, No. 491, § 1; 1977, No. 889, § 31; A.S.A. 1947, §§ 82-3405.2, 82-3405.3; reen. Acts 1987, No. 1021, § 1; 1997, No. 179, § 28.

A.C.R.C. Notes. Part of this section was reenacted by Acts 1987, No. 1021,

§ 1. Acts 1987, No. 834, provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

20-13-211. Fees.

The State Board of Health may establish the fees to be charged by the Division of Health of the Department of Health and Human Services which are deemed necessary to defray the cost of administering and enforcing this subchapter, as follows:

(1) The testing fee not to exceed the cost of administering the National Registry of Emergency Medical Technicians examination;

(2) The certification fee for emergency medical technicians, which shall not exceed twenty dollars (\$20.00). Ten dollars (\$10.00) of the certification fee shall be credited to the Emergency Medical Services Revolving Fund. The certification shall be valid for two (2) years;

(3) The biennial renewal of the emergency medical technician certification, which shall not exceed twenty dollars (\$20.00). Ten dollars (\$10.00) of the biennial renewal shall be credited to the Emergency Medical Services Revolving Fund;

(4) The issuance and annual renewal of an operational permit for each ambulance service, which shall not exceed fifty dollars (\$50.00);

(5) The annual inspection and permitting of emergency vehicles, which shall not exceed five dollars (\$5.00) per vehicle; and

(6) The issuance and renewal of an operational license for each air ambulance service, which shall not exceed one hundred dollars (\$100).

History. Acts 1975, No. 435, § 7; 1985, No. 1001, § 5; A.S.A. 1947, § 82-3407; Acts 1987, No. 345, § 4; 2005, No. 648, § 1.

in (2) and (3), substituted "twenty dollars (\$20.00)" for "ten dollars (\$10.00)" in the first sentence and inserted the second sentence.

Amendments. The 2005 amendment,

20-13-212. Additional fees.

(a) There is imposed an additional annual fee of one hundred dollars (\$100) for the inspection and permitting of ambulances. The fee shall be collected in addition to the fee provided in § 20-13-211(5).

(b) There is imposed an annual fee of five hundred dollars (\$500) for the issuance or renewal of an operational permit for an ambulance service, advanced life support rescue service, or air ambulance service. The fee required by this subsection shall be in addition to all other requirements for the issuance or renewal of an operational permit and shall be required in each county in which the ambulance service, including air ambulance services, has an operational base.

(c)(1) The fees established by this section shall be collected by the Division of Health of the Department of Health and Human Services.

(2) The division shall deposit the fees with the Treasurer of State, and the fees shall be credited to the Arkansas Medicaid Program Trust Fund.

History. Acts 1995, No. 1275, § 1; 1999, No. 38, § 1.

20-13-213. Ambulance standards.

All ambulances operating in this state shall meet all standards prescribed by and under this subchapter and be licensed under this subchapter, and all personnel operating ambulances in this state shall meet the standards prescribed under this subchapter.

History. Acts 1999, No. 60, § 2.

20-13-214. Military emergency medical personnel.

(a) Military personnel who return to the State of Arkansas following active duty and who received emergency medical training on active duty shall be granted initial certification and licensure from the Division of Health of the Department of Health and Human Services as emergency medical technicians under this subchapter, upon proof from the military that the individual received emergency medical training while on active duty.

(b) Military personnel licensed under this section shall be required to pay the fees for biennial renewal of the emergency medical technician certification required under this subchapter.

History. Acts 2005, No. 1674, § 1.

SUBCHAPTER 3 — COUNTY PROGRAMS

SECTION.

- 20-13-301. Legislative intent.
- 20-13-302. Act supplemental.
- 20-13-303. Establishment.
- 20-13-304. Referendum — Effective date of ordinance.

SECTION.

- 20-13-305. Financing.
- 20-13-306. Service charges for preexisting programs.
- 20-13-307. Discontinuance.

Cross References. Legislative powers of county government, § 14-14-801 et seq.

Effective Dates. Acts 1980 (1st Ex. Sess.), No. 40, § 4: Jan. 25, 1980. Emergency clause provided: "It is hereby found and determined by the General Assembly that the procedure established in Act 51 of 1979 for the collection of assessments made by counties for providing emergency medical services to residents creates some serious problems especially with respect to service charges to be billed in 1980; that there is some confusion concerning the vote necessary to ratify an ordinance adopted by the quorum court to establish emergency medical services; that unless the Emergency Medical Services Act is clarified, some counties in the State may lose emergency medical services funding and consequently may not be able to furnish emergency medical services to their residents; that this Act is immediately necessary to permit the quorum court to determine by ordinance the method of collection of emergency medical services charges, and to clarify the provisions of the Emergency Medical Services Act in order to assure that the various counties in the State will be able to continue to furnish emergency medical services to their citizens, and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall

be in full force and effect from and after its passage and approval."

Acts 1980 (1st Ex. Sess.), No. 68, § 4: Feb. 6, 1980. Emergency clause provided: "It is hereby found and determined by the General Assembly that the procedure established in Act 51 of 1979 for the collection of assessments made by counties for providing emergency medical services to residents creates some serious problems especially with respect to service charges to be billed in 1980; that there is some confusion concerning the vote necessary to ratify an ordinance adopted by the quorum court to establish emergency medical services; that unless the Emergency Medical Services Act is clarified, some counties in the State may lose emergency medical services funding and consequently may not be able to furnish emergency medical services to their residents; that this Act is immediately necessary to permit the quorum court to determine by ordinance the method of collection of emergency medical services charges, and to clarify the provisions of the Emergency Medical Services Act in order to assure that the various counties in the State will be able to continue to furnish emergency medical services to their citizens, and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

CASE NOTES

Applicability.

Section 14-14-801 et seq. gives the quorum court of any county the authority to provide for emergency medical services, but the authority created under § 14-14-801 et seq. is governed and limited by the

procedural requirements of this subchapter. *Vandiver v. Washington County*, 274 Ark. 561, 628 S.W.2d 1 (1982).

Section 14-14-801 et seq. and this subchapter were not intended to provide alternative procedures for the establish-

ment of emergency medical services by a county, since to hold that the laws were intended to provide alternative methods would effectively render this subchapter a nullity, as there would be no reason for a quorum court to choose the more arduous

route required by this subchapter when it could accomplish the same result more easily under § 14-14-801 et seq. *Vandiver v. Washington County*, 274 Ark. 561, 628 S.W.2d 1 (1982).

20-13-301. Legislative intent.

It is the intent of this subchapter to authorize the quorum court in any county to provide emergency medical services for residents of the county or any designated area of the county and to provide for levying service charges upon residents of the area to provide funds for the purchase of equipment, the maintenance and operation of equipment, and the payment for personal services necessary to provide the services.

History. Acts 1979, No. 51, § 1; A.S.A. 1947, § 82-3410.

20-13-302. Act supplemental.

The procedures prescribed in this subchapter for the establishment of an emergency medical services program and the furnishing of emergency medical services shall be supplemental to and shall not be construed to repeal or modify any law presently in existence relating to the furnishing of such services.

History. Acts 1979, No. 51, § 7; A.S.A. 1947, § 82-3416.

CASE NOTES

Cited: *Vandiver v. Washington County*, 274 Ark. 561, 628 S.W.2d 1 (1982).

20-13-303. Establishment.

(a) The quorum court of any county on its own motion or upon petition of ten percent (10%) of the electors of the county or any designated area of the county may establish by ordinance a system to provide emergency medical services to the residents of the county or the designated area.

(b)(1) When a quorum court proposes to enact an ordinance to provide emergency medical services, whether on its own motion or upon petition of electors, it shall set a date for a public hearing on the question and shall cause notice of the time and place of the hearing to be published in a newspaper of general circulation in the county or in the area proposed to be served.

(2) All interested parties residing in the county or in the designated area shall have an opportunity to appear and be heard either for or against the establishment of the system.

(3) At the next meeting of the quorum court after the hearing, the quorum court may adopt an ordinance establishing the emergency medical services system for the county or the designated area of the county or may refuse to act further on the matter.

(c) If after the hearing the quorum court enacts an ordinance establishing a system, the ordinance shall specifically describe the area to be included within the system, shall describe the services to be provided the residents of the area, and shall specifically state the estimated cost of the services and the proposed method of financing the services, and such other matters as the quorum court deems appropriate to publicly advise residents of the county or the designated area of the purposes and costs of the system established in the ordinance.

History. Acts 1979, No. 51, § 2; A.S.A. 1947, § 82-3411.

CASE NOTES

ANALYSIS

Applicability.

General county powers law.

Procedural defects.

Applicability.

The requirements of this section apply only when emergency medical services are to be financed by imposition of a service charge on potential users of the service or by a separate mileage assessment; where the services were to be funded by a county sales tax, there was no violation. *West Wash. County Emergency Medical Servs. v. Washington County*, 313 Ark. 76, 852 S.W.2d 137 (1993).

The General Assembly intended the procedural requirements of this section apply to a county's establishment of an emergency medical service which is financed by a service charge rather than by county-wide taxation. *West Wash. County Emergency Medical Servs. v. Washington County*, 313 Ark. 76, 852 S.W.2d 137 (1993).

General County Powers Law.

The general county powers law found in § 14-14-801 is circumscribed by this section when the method of financing a county emergency medical service is by service charge. *West Wash. County Emergency Medical Servs. v. Washington County*, 313 Ark. 76, 852 S.W.2d 137 (1993).

Procedural Defects.

Where the procedures followed by a quorum court in enacting county ordinance regarding emergency medical services substantially complied with the hearing, notice and referendum requirements of this subchapter, and the extensive news treatment given the ordinance afforded the electors actual notice of what they were voting on, any procedural defects in the enactment of the ordinance were cured by the referendum election at which the voters decisively approved the ordinance. *Vandiver v. Washington County*, 274 Ark. 561, 628 S.W.2d 1 (1982).

20-13-304. Referendum — Effective date of ordinance.

(a) Within ten (10) days after the enactment of the ordinance, a copy of the ordinance in its entirety shall be published in a newspaper of general circulation in the county or in the designated area.

(b) The ordinance shall be subject to the referendum which may be exercised in the manner prescribed in Arkansas Constitution, Amendment 7 and laws enacted pursuant to Arkansas Constitution, Amendment 7, and the ordinance shall not be effective until the expiration of

the time prescribed by the Constitution and laws for the filing of referendum petitions.

(c)(1) If at the expiration of the period for filing referendum petitions no petitions have been filed, the ordinance shall become effective.

(2) If referendum petitions have been filed, the ordinance shall be held in abeyance until the election thereon is conducted and the results determined.

(d)(1) If at the election a majority of the qualified electors of the county or the designated area voting on the question vote for the ordinance, it shall become effective.

(2) If a majority of the qualified electors voting on the question at the election vote against the ordinance, it shall be deemed rejected and shall have no force or effect.

History. Acts 1979, No. 51, § 3; 1980 Sess.), No. 68, § 1; A.S.A. 1947, § 82-3412. (1st Ex. Sess.), No. 40, § 1; 1980 (1st Ex.

CASE NOTES

Procedural Defects.

Where the procedures followed by a quorum court in enacting county ordinance regarding emergency medical services substantially complied with the hearing, notice and referendum requirements of this subchapter and the extensive news treatment given the ordinance

afforded the electors actual notice of what they were voting on, any procedural defects in the enactment of the ordinance were cured by the referendum election at which the voters decisively approved the ordinance. *Vandiver v. Washington County*, 274 Ark. 561, 628 S.W.2d 1 (1982).

20-13-305. Financing.

(a) Emergency medical services to be provided the residents of any county or any designated area of the county pursuant to the provisions of this subchapter may be financed by service charges levied in the ordinance establishing the service.

(b)(1) The service charges may be assessed and collected on a per capita, per household, or per unit of service basis or a combination of any of these, as may be determined by the quorum court, and shall be collected in such manner as may be prescribed by ordinance of the quorum court.

(2) If the quorum court elects by ordinance to have the service charges entered on ad valorem tax notices and collected by the county collector at the time of collecting real and personal property taxes, the collector shall not accept payment of any ad valorem taxes unless the taxpayer at the same time pays any service charges billed to him or her to finance emergency medical services.

(c) All funds derived from the levy of service charges to support the furnishing of emergency medical services in the county or designated area shall be used only for the purposes for which levied, and a separate account shall be maintained in the county treasury in which all funds shall be deposited.

emergency medical services in the county or area and discontinue the levy of service charges in the area.

(b) However, the services shall not be discontinued until a public hearing is held at which persons residing in the county or the designated area have an opportunity to appear in behalf of or in opposition to the discontinuance of the services. The time and place of the hearing shall be published in a newspaper of general circulation in the county or designated area at least ten (10) days prior to the date thereof.

(c) When an emergency medical services program is discontinued in the manner authorized in this section, the service charges authorized by the ordinance which established the program shall continue to be collected until all outstanding debts of the program have been paid.

History. Acts 1979, No. 51, § 5; A.S.A. 1947, § 82-3414.

SUBCHAPTER 4 — INSECT STING EMERGENCY TREATMENT ACT

SECTION.

20-13-401. Title.

20-13-402. Purpose.

20-13-403. Definition.

20-13-404. Eligibility for certificate.

SECTION.

20-13-405. Authority of certificate holder.

20-13-406. Immunity.

20-13-407. Administration of act.

Effective Dates. Acts 1983, No. 436, § 11; Mar. 13, 1983. Emergency clause provided: "It is hereby found and declared by the General Assembly of the State of Arkansas that it is necessary to provide for emergency treatment to certain individuals when a physician is not immediately available to administer life-saving

treatment to those persons who have severe adverse reactions to insect stings. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

20-13-401. Title.

This subchapter shall be known and cited as the "Insect Sting Emergency Treatment Act".

History. Acts 1983, No. 436, § 1; A.S.A. 1947, § 82-4501.

20-13-402. Purpose.

It is the purpose of this subchapter to provide a means of authorizing certain individuals to administer treatment to those persons who have severe adverse reactions to insect stings when a physician is not immediately available.

History. Acts 1983, No. 436, § 2; A.S.A. 1947, § 82-4502.

20-13-403. Definition.

As used in this subchapter, "physician" means a natural person licensed to practice medicine in the State of Arkansas pursuant to the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.

History. Acts 1983, No. 436, § 3;
A.S.A. 1947, § 82-4503.

20-13-404. Eligibility for certificate.

Persons eligible to receive a certificate pursuant to this subchapter shall meet the following requirements:

- (1) Be eighteen (18) years of age or older;
- (2) Have, or reasonably expect to have, responsibility for at least one (1) other person as a result of one's relationship or occupational or volunteer status, for example, parents, camp counselors, scout leaders, schoolteachers, forest rangers, tour guides, or chaperones;
- (3) Have been properly instructed by a physician licensed under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq. The curriculum shall minimally include recognition of the symptoms of systemic reactions to insect stings and the proper administration of a subcutaneous injection of epinephrine.

History. Acts 1983, No. 436, §§ 4, 5;
A.S.A. 1947, §§ 82-4504, 82-4505.

20-13-405. Authority of certificate holder.

(a) A certificate issued pursuant to this subchapter shall authorize the certificate holder to receive, upon presentation of the certificate, from any physician a prescription for premeasured doses of epinephrine and the necessary paraphernalia for administration.

(b) The certificate shall also authorize the certificate holder to possess and administer, in an emergency situation when a physician is not immediately available, the prescribed epinephrine to persons suffering a severe adverse reaction to an insect sting.

(c) The certificate holder may administer epinephrine as provided in this subchapter only to those persons for whom the holder is responsible as provided in § 20-13-404(2).

History. Acts 1983, No. 436, § 7;
A.S.A. 1947, § 82-4507.

20-13-406. Immunity.

No cause of action shall arise against a certificate holder pursuant to this subchapter or against the issuing physician for any act or omission when acting in good faith pursuant to the authority granted by this subchapter, except when the conduct amounts to gross negligence.

History. Acts 1983, No. 436, § 8;
A.S.A. 1947, § 82-4508.

20-13-407. Administration of act.

(a) The Division of Health of the Department of Health and Human Services shall prepare the appropriate certificate form to be available to physicians upon request to accomplish the purposes of this subchapter.

(b) A copy of all certificates issued pursuant to this subchapter shall be forwarded by the issuing physician to the division to be maintained on file and subject to public inspection.

History. Acts 1983, No. 436, § 6;
A.S.A. 1947, § 82-4506.

SUBCHAPTER 5 — POISON CONTROL — DRUG INFORMATION — TOXICOLOGICAL LABORATORY SERVICES

SECTION.

- 20-13-501. Legislative finding.
- 20-13-502. Purpose of program.
- 20-13-503. Definitions.
- 20-13-504. Penalties.
- 20-13-505. Authority of director.
- 20-13-506. Advisory committee — Creation.

SECTION.

- 20-13-507. Structure and design of program.
- 20-13-508. Designation of personnel.
- 20-13-509. Compensation for student workers.
- 20-13-510. Personnel immunity.
- 20-13-511. Recordkeeping and reporting.

A.C.R.C. Notes. Acts 1991, No. 796, § 9, transferred the poison control and drug information portions of the Poison Control-Drug Information — Toxicological Laboratory Services Unitary System (§ 20-13-501 et seq.) to the College of Pharmacy of the University of Arkansas for Medical Sciences. The toxicological laboratory services are to remain the responsibility of the Arkansas Department of Health.

Cross References. Labelling of poisons, §§ 17-92-411, 20-62-101.

Records of poison sales, § 17-92-410.

Strychnine, restrictions on sale, § 20-62-102.

Effective Dates. Acts 1975, No. 600, § 12: Mar. 28, 1975. Emergency clause provided: "It is hereby determined and declared by the General Assembly that the increasing need among Arkansas medical and allied health professionals for the kind of toxicology services created within this PC-DI-TL system is so great that public health and safety require that immediate steps be taken to insure immediate passage of this act to protect Arkansas

citizens from the danger posed by injudicious use of dangerous substances, therefore, an emergency is hereby declared to exist and this Act, necessary for preservation of the public peace, health, and safety, shall be in full force from and after its passage and approval."

Acts 1983, No 793, § 3: July 1, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that this Act should become effective at the beginning of the next fiscal year and that unless this emergency clause is adopted this Act may not become effective until after that date. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1983."

Acts 1991, No. 796, § 13: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly that the public health and safety require that immediate steps be taken to insure immediate passage of this act to protect the citizens of

this state from the danger posed by injudicious use of dangerous substances; that this act should become effective at the beginning of the next fiscal year and that unless this emergency clause is adopted this act may not become effective until after that date. Therefore an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for

board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

20-13-501. Legislative finding.

(a) The General Assembly finds and declares that because of the inherent threat of human danger posed by injudicious use, or misuse, of dangerous substances, the physicians and allied health professionals who provide health care services for Arkansas citizens are in need of emergency poison control and drug information and toxicological laboratory services sufficient to provide, on a twenty-four-hour coverage basis, reliable, accurate, and qualified professional judgments and responses to requests for emergency poison control and drug information data and emergency toxicological laboratory services such as analysis of blood, urine, vomitus, and gastric lavage for substance identification, and that public health and welfare require such services.

(b) The General Assembly further finds and declares that legislation is required to authorize and provide effective practical delivery of emergency poison control and drug information and toxicological laboratory services judgments and responses to physicians and allied health professionals who deliver health care services within this state.

History. Acts 1975, No. 600, § 1; A.S.A. 1947, § 82-3501.

20-13-502. Purpose of program.

The purpose of this subchapter shall be to implement a statewide emergency poison control-drug information-toxicological laboratory services program (PC-DI-TL) designed and structured to deliver, on a twenty-four-hour coverage basis, reliable, accurate, qualified professional judgments and responses to requests for emergency poison control-drug information data and toxicological laboratory services, such services to include, but not be limited to, analysis of blood, urine, vomitus, and gastric lavage for substance identification purposes.

History. Acts 1975, No. 600, § 2;
A.S.A. 1947, § 82-3502.

20-13-503. Definitions.

As used in this subchapter:

(1) "Category I response" within the toxicology laboratory component means a response delivered within six (6) hours after receipt of the sample to be identified;

(2) "Category II response" within the toxicology laboratory component means a response delivered within twelve (12) hours after receipt of the sample to be identified;

(3) "Division" means the Division of Health of the Department of Health and Human Services;

(4) "Director" means the Director of the Division of Health of the Department of Health and Human Services;

(5) "Emergency request" means a request for emergency assistance initiated by any licensed Arkansas medical or allied health professional when life-jeopardizing circumstances require PC-DI-TL services to effectuate treatment;

(6) "Emergency sample" means any sample, nonroutine in nature, submitted to the toxicology laboratories for analysis as a necessary clinical adjunct to emergency patient treatment;

(7) "Information retrieval" within the PC-DI-TL context means a system which includes, but is not limited to:

(A) DEC-10 UAMS-Pharmacy computer terminal directly interfaced with the computer facility of the University of Arkansas for Medical Sciences facility containing six thousand (6,000) listings of the most commonly contacted poisons;

(B) A UAMS-Pharmacy microfiche system containing seventy-six thousand (76,000) listings of different products and management information together with extensive product identification information;

(C) A UAMS-Pharmacy "Tox-file", a compilation of commercial products published by the National Clearinghouse for Poison Control Centers;

(D) A classic, widely accepted UAMS-Pharmacy resource reference, Gleason, Gosselein, & Hodge, Clinical Toxicology of Commercial Products;

(E) UAMS-Pharmacy toxicity and overdosage manuals provided by national pharmaceutical firms;

(F) UAMS-Pharmacy resource toxicological library treating all subject matter for less common toxic materials, chemicals, and plants;

(G) UAMS-Pharmacy direct contact with medical directors of pharmaceutical manufacturing companies;

(H) UAMS-Library "MEDLINE" and "TOXLINE" computer database systems embracing bibliographic references to medical toxicological literature;

(I) UAMS-Library manual literature search, a trained searcher's use of library bibliographic sources such as indices, abstracts, and bibliographies to provide information requested;

(J) UAMS-Library drug reference search, a trained searcher's use of library drug lists, compendia, and other books to locate factual information of a drug, food, or other chemical substance; and

(K) UAMS-Library, de Haen, Drugs in Use, excerpted data from published literature on clinical use of a drug showing scope of study, drug used, dosage, concomitant therapy, disease condition, incidence or absence of adverse reactions, and description of effectiveness. This information is available on approximately two thousand (2,000) drugs;

(8) "Medical or allied health professional" means a licensed physician, nurse, pharmacist, dentist, psychologist, veterinarian, hospital administrator, hospital chemist, technician, or institutional chemist;

(9) "PC-DI-TL services system" means the Poison Control-Drug Information-Toxicological Laboratory Services Unitary System with three (3) definite and permanent components: UAMS-Pharmacy, UAMS-Library, and the Chemistry Branch of the Public Health Laboratory of the Division of Health of the Department of Health and Human Services;

(10) "Toxicology laboratory services" means those services provided the system by the Chemistry Branch of the Public Health Laboratory of the Division of Health of the Department of Health and Human Services, which is that permanent component within the unitary system charged with toxicology laboratory services responsibility;

(11) "UAMS-Library" means the Library of the University of Arkansas for Medical Sciences, which is that permanent component within the unitary system charged with nonemergency poison and drug information responsibility; and

(12) "UAMS-Pharmacy" means the Department of Pharmacology of the College of Pharmacy of the University of Arkansas for Medical Sciences, which is that permanent component within the unitary system charged with emergency poison and drug information responsibility.

History. Acts 1975, No. 600, § 3;
A.S.A. 1947, § 82-3503.

20-13-504. Penalties.

Any individual who shall fraudulently represent himself or herself to be a person entitled to invoke the services of the PC-DI-TL system when such is not the case or any person who attempts to obtain information later put to illegal use in any way shall be deemed guilty of a misdemeanor and upon conviction in any court of competent jurisdiction shall be fined a sum not to exceed five hundred dollars (\$500) or imprisoned for a period not to exceed six (6) months, or both.

History. Acts 1975, No. 600, § 9;
A.S.A. 1947, § 82-3509.

20-13-505. Authority of director.

(a) The Director of the Division of Health of the Department of Health and Human Services may:

(1) Employ any coordination measures necessary to effectuate the purposes of this subchapter within and among the responsible components;

(2) Engage in any educational program or effort undertaken in partnership with county or municipal governmental agencies or other groups if, in his or her judgment, such activity would effectuate the purposes of this subchapter;

(3) Authorize any component within the system to employ experts and consultants and compensate those individuals at rates determined by the director in consultation with component representatives of the University of Arkansas for Medical Sciences; and

(4) Engage in programs of experimental or demonstration research.

(b) Additionally, the director may accept and administer loans, grants, or other funds and gifts, conditional or otherwise, from the federal government and any other public or private sources. In all such transactions, the PC-DI-TL system shall remain unitary, and the director shall allow no function which might require the separation of the components.

(c) The director shall have full authority, in consultation with the two (2) University of Arkansas for Medical Sciences components of the PC-DI-TL system, to formulate, promulgate, adopt, amend, and enforce rules, regulations, and regulatory standards necessary to effectuate this subchapter in a way consistent with § 10-3-309.

History. Acts 1975, No. 600, §§ 6, 7;
A.S.A. 1947, §§ 82-3506, 82-3507.

20-13-506. Advisory committee — Creation.

(a)(1) The Division of Health of the Department of Health and Human Services may appoint an advisory committee to assist in the development and review of regulations promulgated under the authority of this subchapter.

(2) The committee shall consist of an uneven number of persons, not to exceed seven (7), appointed by the Director of the Division of Health of the Department of Health and Human Services.

(b)(1) Membership on the advisory committee shall include representatives qualified by experience and affiliation to represent the viewpoints of persons and groups most likely to become participants within the PC-DI-TL services components of the established program.

(2) The advisory committee may include representatives from the medical and allied health professional community, individuals with poison control, drug information, and toxicological services knowledge

and expertise, state and local governmental officials, and public interest groups.

(3) In the selection of members, the director shall appoint only those persons with professional expertise in poison control, drug information, toxicological laboratory services, or other health and safety fields.

(c) Members of the advisory committee may receive expense reimbursement in accordance with § 25-16-901 et seq.

(d) Any reasonable administrative and technical assistance required by the committee shall be provided by the director in consultation with the UAMS-Pharmacy and UAMS-Library permanent components of the PC-DI-TL program.

(e) The advisory committee may seek advice and information from interested knowledgeable persons or governmental agencies within or without the state to assist in policy determinations and regulatory standards.

History. Acts 1975, No. 600, § 4;
A.S.A. 1947, § 82-3504; Acts 1997, No.
250, § 183.

20-13-507. Structure and design of program.

(a)(1)(A) The time-response design shall embrace two (2) broad, major, selective categories inherent in the threat of human danger posed by injudicious use or misuse of dangerous substances.

(B) A Category I response shall be delivered within six (6) hours after receipt of the sample to be identified.

(C) A Category II response shall be delivered within twelve (12) hours after receipt of the sample to be identified.

(D) All responses shall be followed in each instance by a written confirmation report at the earliest practicable date.

(2) Determinative category substances shall be:

CATEGORY I (6 hrs.)

- 1) barbiturates
- 2) narcotics
- 3) amphetamines
- 4) salicylates
- 5) phenothiazine
- 6) alcohol
- 7) chloral hydrate
- 8) Librium
- 9) Valium
- 10) Placidyl
- 11) Meprobamate
- 12) Methaqualone
- 13) Glutethimide

CATEGORY II (12 hrs.)

- 1) pesticides
- 2) heavy metals
- 3) other substances

CATEGORY I
(6 hrs.)

14) other drugs

CATEGORY II
(12 hrs.)

(b) Under the authority of this subchapter, participating hospital emergency room personnel shall be qualified and trained to use spot tests and thin-layer chromatography in conducting blood and urine presumptive chemical tests for drugs and harmful chemicals as well as quick scanning examinations for common drugs such as narcotics, barbiturates, amphetamines, and salicylates.

(c) Program design includes efficient supporting recordkeeping and reporting measures within the communications network.

(d) Though this program shall at all times function as a unitary system of services to Arkansas medical and allied health professionals, it shall embrace three (3) permanent components:

(1) The College of Pharmacy of the University of Arkansas for Medical Sciences which is charged with emergency poison and drug information responsibility;

(2) The Library of the University of Arkansas for Medical Sciences which is charged with nonemergency poison and drug information responsibility; and

(3) The Chemistry Branch of the Public Health Laboratory of the Division of Health of the Department of Health and Human Services which is charged with the emergency toxicological laboratory services responsibility.

History. Acts 1975, No. 600, § 2;
A.S.A. 1947, § 82-3502.

20-13-508. Designation of personnel.

(a) Each permanent component within the PC-DI-TL services system shall designate those persons within the component department who shall have responsibility for implementing and developing this toxicology services system, and each shall provide written notice of the designations to the Director of the Division of Health of the Department of Health and Human Services.

(b) The persons so designated shall be qualified by education, training, and experience to ensure the effectiveness of this subchapter.

History. Acts 1975, No. 600, § 6;
A.S.A. 1947, § 82-3506.

20-13-509. Compensation for student workers.

(a) Subject to the approval of the Dean of the College of Pharmacy of the University of Arkansas for Medical Sciences, registration or tuition fees, or both, in the University of Arkansas System are to be waived for those students who provide concurrent services to the Arkansas Poison

and Drug Information Center of the College of Pharmacy of the University of Arkansas for Medical Sciences.

(b) Any funds at the disposal of the College of Pharmacy of the University of Arkansas for Medical Sciences can be used to provide scholarships and fellowships to those providing services to the center.

History. Acts 1975, No. 600, § 6; 1983, No. 793, § 1; A.S.A. 1947, § 82-3506.

20-13-510. Personnel immunity.

None of the personnel within any of the components of the PC-DI-TL system shall incur personal liability or be placed in any legal jeopardy for laboratory services provided, analyses executed and reported, information proffered in good faith, professional judgments and responses provided for the system, or any good faith professional efforts to effectuate the purposes of this subchapter.

History. Acts 1975, No. 600, § 8; A.S.A. 1947, § 82-3508.

20-13-511. Recordkeeping and reporting.

Each of the University of Arkansas for Medical Sciences components, the Arkansas Poison and Drug Information Center, the Library of the University of Arkansas for Medical Sciences for nonemergency poison and drug information, and the Chemistry Branch of the Public Health Laboratory of the Division of Health of the Department of Health and Human Services, shall make available to the Director of the Division of Health of the Department of Health and Human Services, in such manner, form, or at such times as he or she shall require, copies of records and reports regarding all activities authorized and developed pursuant to this subchapter.

History. Acts 1975, No. 600, § 5; A.S.A. 1947, § 82-3505.

SUBCHAPTER 6 — NERVE AGENTS EMERGENCY TREATMENT ACT

SECTION.	SECTION.
20-13-601. Title.	20-13-605. Authority of certificate holder.
20-13-602. Purpose.	20-13-606. Immunity.
20-13-603. Definition.	20-13-607. Administration of subchapter.
20-13-604. Eligibility for certificate.	

Effective Dates. Acts 1991, No. 270, § 11; Feb. 28, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that it is necessary to provide for the emergency treatment of

those persons who have a severe adverse reaction to nerve agents since stockpiles of nerve agents do exist within the state of Arkansas. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation

of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

20-13-601. Title.

This subchapter shall be known and cited as the "Nerve Agents Emergency Treatment Act".

History. Acts 1991, No. 270, § 1.

20-13-602. Purpose.

It is the purpose of this subchapter to provide a means of authorizing certain individuals to administer treatment to those persons who have severe adverse reactions to nerve agents when a physician is not immediately available.

History. Acts 1991, No. 270, § 2.

20-13-603. Definition.

As used in this subchapter, "physician" means a natural person licensed to practice medicine in the State of Arkansas pursuant to the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.

History. Acts 1991, No. 270, § 3.

20-13-604. Eligibility for certificate.

Persons eligible to receive a certificate pursuant to this subchapter shall meet the following requirements:

- (1) Be eighteen (18) years of age or older;
- (2) Have, or reasonably expect to have, responsibility for at least one (1) other person as a result of one's relationship, or one's occupational or volunteer status, for example, emergency medical technician, fire department personnel, P.H. nurses, etc.; and
- (3) Have been properly trained by a qualified instructor who has been certified by a physician licensed under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq. The curriculum shall minimally include recognition of the symptoms of systemic reactions to nerve agents and the proper administration of an injection of atropine/pralidoxime, or other drugs as approved by the State Health Officer for the treatment of symptoms caused by exposure to nerve agents.

History. Acts 1991, No. 270, § 4.

20-13-605. Authority of certificate holder.

(a) A certificate issued pursuant to this subchapter shall authorize the holder thereof to receive upon presentation of the certificate, from any physician, a prescription for premeasured doses of atropine/pralidoxime, or other drugs as approved by the State Health Officer for the treatment of symptoms caused by exposure to nerve agents, and the necessary paraphernalia for administration.

(b) The certificate shall also authorize the holder thereof to possess and administer, in an emergency situation when a physician is not immediately available, the prescribed atropine/pralidoxime, or other drugs as approved by the State Health Officer for the treatment of symptoms caused by exposure to nerve agents, to persons suffering a severe adverse reaction to nerve agents.

(c) The holder may administer atropine/pralidoxime, or other drugs as approved by the State Health Officer, for the treatment of symptoms caused by exposure to nerve agents.

History. Acts 1991, No. 270, § 5.

20-13-606. Immunity.

No cause of action shall arise against a certificate holder pursuant to this subchapter or against the issuing physician for any act or omission when acting in good faith pursuant to the authority granted by this subchapter, except when the conduct amounts to gross negligence.

History. Acts 1991, No. 270, § 6.

20-13-607. Administration of subchapter.

(a) The Division of Health of the Department of Health and Human Services shall prepare the appropriate certificate form to be available to physicians upon request to accomplish the purposes of this subchapter.

(b) A copy of all certificates issued pursuant to this subchapter shall be forwarded by the issuing physician to the division to be maintained on file and subject to public inspection.

History. Acts 1991, No. 270, § 7.

SUBCHAPTER 7 — ARKANSAS POISON AND DRUG INFORMATION CENTER

SECTION.

- 20-13-701. Legislative findings.
- 20-13-702. Creation — Purpose — Scholarships — Waiver of tuition services.
- 20-13-703. Definitions.
- 20-13-704. Certification as state poison control center — Liability.

SECTION.

- 20-13-705. Obtaining information through fraudulent representation.
- 20-13-706. Director — Powers and duties.

A.C.R.C. Notes. Acts 1991, No. 796, § 9, transferred the poison control and drug information portions of the Poison Control-Drug Information — Toxicological Laboratory Services Unitary System (§ 20-13-501 et seq.) to the College of Pharmacy of the University of Arkansas for Medical Sciences. The toxicological laboratory services are to remain the responsibility of the Arkansas Department of Health.

Effective Dates. Acts 1991, No. 796, § 13: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly that the public health and safety require that immediate steps be taken to insure immediate passage of this act to protect the citizens of this state from the danger posed by injudicious use of dangerous substances; that this act should become effective at the beginning of the next fiscal year and that unless this emergency clause is adopted this act may not become effective until after that date. Therefore an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health

and safety shall be in full force and effect from and after July 1, 1991."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

20-13-701. Legislative findings.

(a) The General Assembly finds and declares that, because of the inherent threat of human danger posed by injudicious use, or misuse, of dangerous substances, Arkansas citizens are in need of emergency poison and drug information services and that the public health and welfare require such services.

(b) The General Assembly further finds and declares that legislation is required to authorize and provide effective practical delivery of emergency poison and drug information services judgments and responses to physicians and allied health professionals who deliver health care services within this state and, if funds permit, to those citizens of this state who request such services.

History. Acts 1991, No. 796, § 1.

20-13-702. Creation — Purpose — Scholarships — Waiver of tuition services.

(a) There is created the Arkansas Poison and Drug Information Center within the College of Pharmacy of the University of Arkansas for Medical Sciences.

(b) The purpose of the center is to implement a statewide emergency poison and drug information program designed and structured to

deliver reliable, accurate, qualified professional judgments and responses to requests for emergency poison and drug information data.

(c) Any funds at the disposal of the College of Pharmacy of the University of Arkansas for Medical Sciences can provide scholarships and fellowships to those providing services to the center.

(d) Subject to the approval of the Dean of the College of Pharmacy of the University of Arkansas for Medical Sciences, registration or tuition fees, or both, in the University of Arkansas System are to be waived for those students who provide concurrent services to the center.

History. Acts 1991, No. 796, §§ 3, 6.

20-13-703. Definitions.

As used in this subchapter:

(1) "Center" means the Arkansas Poison and Drug Information Center; and

(2) "Director" means the Director of the Arkansas Poison and Drug Information Center.

History. Acts 1991, No. 796, § 2.

20-13-704. Certification as state poison control center — Liability.

(a) The program of the Arkansas Poison and Drug Information Center shall be structured and designed, to the extent resources permit, to meet the criteria for certification as a state poison control center by the American Association of Poison Control Centers.

(b) None of the center personnel or its designees shall incur personal liability or be placed in any legal jeopardy for information proffered in good faith, professional judgments and responses provided for the system, or any good faith professional effort to effectuate the purposes of this subchapter.

History. Acts 1991, No. 796, §§ 5, 7.

20-13-705. Obtaining information through fraudulent representation.

Any individual who shall fraudulently represent himself or herself to be a person entitled to invoke the services of the center when such is not the case and any person who attempts to obtain information later put to illegal use in any way shall upon conviction be guilty of a Class B misdemeanor.

History. Acts 1991, No. 796, § 8.

20-13-706. Director — Powers and duties.

(a) The Director of the Arkansas Poison and Drug Information Center shall serve at the pleasure of the Dean of the College of Pharmacy of the University of Arkansas for Medical Sciences.

(b) The director may:

(1) Employ any coordination measures necessary to effectuate the purposes of this subchapter;

(2) Engage in any educational program or effort if, in his or her judgment, such an activity would effectuate the purposes of this subchapter;

(3) Employ experts and consultants and compensate those individuals at rates determined by the director;

(4) Engage in programs of experimental or demonstrational research;

(5) Appoint an advisory committee to assist in the development and review of regulations promulgated under the authority of this subchapter and reimburse the members for their expenses in accordance with § 25-16-901 et seq.;

(6) Accept and administer loans, grants, or other funds and gifts, conditional or otherwise, from the federal government and any other public or private sources;

(7) Formulate, promulgate, adopt, amend, and enforce rules, regulations, and regulatory standards necessary to effectuate this subchapter;

(8) Establish and charge fees for the provision of nonemergency informational and educational services, as well as contract therefor; and

(9) Establish a “1-900” telephone number if funding otherwise precludes twenty-four-hour coverage consistent with requirements for certification by the American Association of Poison Control Centers.

History. Acts 1991, No. 796, §§ 3, 4;
1997, No. 250, § 184.

SUBCHAPTER 8 — TRAUMA SYSTEM ACT

SECTION.	SECTION.
20-13-801. Title.	20-13-806. Trauma data collection and evaluation system — Confidentiality of records.
20-13-802. Legislative findings.	20-13-807. Trauma Advisory Council.
20-13-803. Definitions.	20-13-808. Terms — Vacancies — Meetings — Rules.
20-13-804. Powers and duties of the division.	
20-13-805. Standards for verification of trauma center status.	

20-13-801. Title.

This subchapter shall be known and cited as the “Trauma System Act”.

History. Acts 1993, No. 559, § 1.

20-13-802. Legislative findings.

Trauma is recognized as the leading killer of persons one (1) year to forty-four (44) years of age and is a serious yet preventable disease. The State of Arkansas incurs a massive expense from trauma in lives lost, productive years destroyed, and the emotional and monetary expense of caring for victims of trauma. The experience of other states has shown that a comprehensive trauma system including all phases of trauma care, from prevention, prehospital care, and trauma center designation to rehabilitative care, can vastly improve overall trauma problems.

History. Acts 1993, No. 559, § 2.

20-13-803. Definitions.

As used in this subchapter:

(1) "Division" means the Division of Health of the Department of Health and Human Services; and

(2) "EMS Division" means the Division of Emergency Medical Services of the Division of Health of the Department of Health and Human Services.

History. Acts 1993, No. 559, § 3.

20-13-804. Powers and duties of the division.

(a) The Division of Health of the Department of Health and Human Services may develop and implement a comprehensive trauma care system that provides guidelines for the care of trauma victims and is fully integrated with all available resources, including, but not limited to, existing emergency medical services providers, hospitals, or other health care providers that would like to participate in the program.

(b) The division shall promulgate such rules and regulations as are necessary to implement and administer this subchapter.

History. Acts 1993, No. 559, § 4.

20-13-805. Standards for verification of trauma center status.

The Division of Health of the Department of Health and Human Services may adopt standards for verification of trauma center status which assign level designations based on resources available within the facility. Standards shall be based upon national guidelines, including those established by the American College of Surgeons entitled "Hospital and Prehospital Resources for Optimal Care of the Injured Patient" and published appendices thereto. Standards specific to rural and urban areas shall be developed and adopted by rule of the division.

History. Acts 1993, No. 559, § 5.

20-13-806. Trauma data collection and evaluation system — Confidentiality of records.

(a) The Division of Health of the Department of Health and Human Services may develop a trauma data collection and evaluation system, known as the "Trauma Registry". The Trauma Registry shall be designed to study the trauma system to improve patient outcome and ensure compliance with standards of verification.

(b) The division may collect, as deemed necessary and appropriate, data and information regarding patients admitted to a facility through the emergency department, through a trauma center, or directly to a special care unit. Data and information shall be collected in a manner which protects and maintains the confidential nature of patient records.

(c) Records and reports made pursuant to this subchapter shall be held confidential within the hospital and division and shall not be available to the public.

History. Acts 1993, No. 559, § 6.

20-13-807. Trauma Advisory Council.

(a) There is established an advisory council, to be known as the "Trauma Advisory Council", for the purpose of making recommendations, advising, and providing assistance to the Division of Emergency Medical Services of the Division of Health of the Department of Health and Human Services concerning the development of a statewide trauma system.

(b) The council shall consist of twelve (12) members who have a demonstrated interest in trauma systems, to be appointed by the Governor as follows:

(1) One (1) member appointed from a list of two (2) nominees submitted by the Arkansas Chapter of the American College of Emergency Physicians;

(2) One (1) member appointed from a list of two (2) nominees submitted by the Arkansas Academy of Family Physicians;

(3) One (1) member appointed from a list of two (2) nominees submitted by the Arkansas Chapter of the American College of Surgeons;

(4) One (1) member appointed from a list of two (2) nominees submitted by the Arkansas Medical Society;

(5) One (1) member appointed from a list of two (2) nominees submitted by the Arkansas Hospital Association;

(6) One (1) member appointed from a list of two (2) nominees submitted by the Governor's Emergency Medical Services Advisory Council;

(7) One (1) member appointed from a list of two (2) nominees submitted by the Arkansas Emergency Nurses' Association;

(8) One (1) member appointed from a list of two (2) nominees submitted by the Arkansas Emergency Technicians' Association;

(9) One (1) member appointed from a list of two (2) nominees submitted by the Arkansas Ambulance Association;

(10) One (1) member appointed from a list of two (2) nominees submitted by the Arkansas Emergency Medical Services for Children Program;

(11) One (1) member appointed from a list of two (2) nominees submitted by the Arkansas Trauma Society; and

(12) One (1) member appointed from the public at large as a consumer representative who has an interest in trauma systems.

(c) The following shall also be members of the council:

(1) The Director of the Department of Health and Human Services;

(2) The Director of the Highway Safety Program of the Arkansas State Highway and Transportation Department;

(3) The Director of the Department of Arkansas State Police;

(4) Two (2) members to be appointed by and to serve at the pleasure of the President Pro Tempore of the Senate; and

(5) Four (4) members to be appointed by and to serve at the pleasure of the Speaker of the House of Representatives.

History. Acts 1993, No. 559, § 7; 1995, No. 981, § 1; 2001, No. 1288, § 16.

Amendments. The 2001 amendment substituted “members to be appointed by and to serve at the pleasure of” for “senators

appointed by” in (c)(4); and substituted “members to be appointed by and to serve at the pleasure of” for “representatives appointed by” in (c)(5).

20-13-808. Terms — Vacancies — Meetings — Rules.

(a)(1) All members of the Trauma Advisory Council appointed by the Governor shall be appointed for terms of four (4) years.

(2) Vacancies shall be filled in the manner provided in this subchapter for the original appointment. Persons appointed to fill vacancies shall serve the unexpired portions of the terms.

(b) The members of the council shall elect from their membership a chair, a vice chair, and a secretary-treasurer, whose duties shall be those customarily exercised by those officers or duties specifically designated by the board. All officers shall serve for a period of one (1) year and until their successors are elected.

(c) The council shall meet at least two (2) times a year but may meet more frequently upon the call of the chair or at the request, stated in writing, of any seven (7) members of the council.

(d) The council shall establish its own rules of procedure.

History. Acts 1993, No. 559, § 8.

Publisher's Notes. Acts 1993, No. 559, § 8, provided: “The first members of the council appointed by the Governor shall draw lots to determine their respective terms as follows:

“(A) Three (3) shall serve a term of four (4) years;

“(B) Three (3) shall serve a term of three (3) years;

“(C) Three (3) shall serve a term of two (2) years; and

“(D) Three (3) shall serve a term of one (1) year.”

SUBCHAPTER 9 — ARKANSAS EMERGENCY MEDICAL SERVICES DO NOT RESUSCITATE ACT

SECTION.

- 20-13-901. Definitions.
- 20-13-902. Immunities.
- 20-13-903. Authorization to follow Emergency Medical Services Do Not Resuscitate Orders in the prehospital setting.
- 20-13-904. Adherence to Do Not Resusci-

SECTION.

- tate Protocol — Transfer of patients.
- 20-13-905. Patient's decision — Effect on insurance.
- 20-13-906. Rulemaking authority.
- 20-13-907. Reciprocity.
- 20-13-908. Penalties.

20-13-901. Definitions.

As used in this subchapter:

- (1) "Attending physician" has the meaning provided in § 20-17-201;
- (2) "Board" means the State Board of Health;
- (3) "Division" means the Division of Health of the Department of Health and Human Services;
- (4) "Do Not Resuscitate Identification" means a standardized identification card, form, necklace, or bracelet of uniform size and design, approved by the division, that signifies:

(A) That the possessor has executed an advance directive as provided in § 20-17-202 which specifically addresses the cardiopulmonary resuscitation option of health care and which has not been revoked; or

(B) That the possessor's attending physician has issued an Emergency Medical Services Do Not Resuscitate Order for the possessor and has documented the grounds for the order in the possessor's medical file;

(5)(A) "Emergency Medical Services Do Not Resuscitate Order" means a written physician's order in a form approved by the division which authorizes qualified emergency medical services personnel to withhold cardiopulmonary resuscitation from a particular patient in the event of cardiac or respiratory arrest.

(B) For the purposes of this subchapter, "cardiopulmonary resuscitation" or "CPR" shall include cardiac compression, endotracheal intubation and other advanced airway management, artificial ventilation, defibrillation, administration of cardiac resuscitation medications, and related procedures.

(C)(i) Emergency Medical Services Do Not Resuscitate Orders shall not authorize the withholding of other medical interventions such as intravenous fluids, oxygen, nutrition or hydration, or both, or other indicated therapies short of cardiopulmonary resuscitation unless the therapies are also specified by advance directive or durable power of attorney for health care to be withheld.

(ii) The Emergency Medical Services Do Not Resuscitate Orders shall not authorize the withholding of therapies deemed necessary to provide comfort care or alleviate pain;

(6) "Emergency Medical Services Do Not Resuscitate Protocol" means a standardized method of procedure, approved by the board and

adopted in the rules of the division, for the withholding of emergency life-sustaining procedures by emergency medical services personnel;

(7) "Emergency medical services personnel" means paid or volunteer firefighters, law enforcement officers, first responders, emergency medical technicians, or other emergency service personnel acting within the ordinary course of their professions;

(8)(A) "Health care facility" means any institution, building, or agency or portion thereof, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons.

(B) "Health care facility" includes, but is not limited to, ambulatory surgical facilities, health maintenance organizations, home health agencies, hospices, hospitals, infirmaries, kidney treatment centers, long-term care facilities, medical assistance facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, residential treatment facilities, and adult day care centers;

(9) "Life-sustaining procedure" means cardiopulmonary resuscitation or a component of cardiopulmonary resuscitation; and

(10) "Physician" means a person licensed to practice medicine in this state pursuant to the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.

History. Acts 1993, No. 1101, § 1; 2003, No. 1322, § 2.

A.C.R.C. Notes. Acts 2003, No. 1322, § 6, provided: "Legislative purpose. (a)(1) The General Assembly recognizes that residents of long-term care facilities are among the most vulnerable of the state's citizens.

"(2) Further, the disproportionate number of these residents who are Medicaid eligible, and who have little or no close family involvement in their lives, heightens their vulnerability.

"(b) It is the intent of the General Assembly that, to ensure proper care and treatment of these individuals, particularly at end-of-life, the circumstances and conditions under which the withholding of nutrition, hydration, or both, may occur, be clarified."

Amendments. The 2003 amendment, in (5)(C), inserted "nutrition or hydration, or both" and "or durable power of attorney for health care"; and made stylistic changes in (5), (7), and (8).

20-13-902. Immunities.

(a) The following are not subject to civil or criminal liability and are not guilty of unprofessional conduct upon discovery of Do Not Resuscitate Identification upon a person:

(1) A physician who causes the withholding or withdrawal of life-sustaining procedures from that person;

(2) A person who participates in the withholding or withdrawal of life-sustaining procedures under the direction or with the authorization of a physician;

(3) Emergency medical services personnel who cause or participate in the withholding or withdrawal of life-sustaining procedures from that person;

(4) A health care facility in which withholding or withdrawal of life-sustaining procedures from that person occurs; and

(5) Physicians, persons under the direction or authorization of a physician, emergency medical services personnel, or health care facilities that provide life-sustaining procedures pursuant to an oral or written request communicated to them by a person who possesses Do Not Resuscitate Identification.

(b) The provisions of subdivisions (a)(1)-(5) of this section apply when a life-sustaining procedure is withheld or withdrawn in accordance with the Emergency Medical Services Do Not Resuscitate Protocol.

(c) Emergency medical services personnel who follow a Do Not Resuscitate Order from a licensed physician are not subject to civil or criminal liability and are not guilty of unprofessional conduct.

History. Acts 1993, No. 1101, § 2.

20-13-903. Authorization to follow Emergency Medical Services Do Not Resuscitate Orders in the prehospital setting.

(a) Qualified emergency medical services personnel may follow Emergency Medical Services Do Not Resuscitate Orders pertaining to adult patients in the prehospital setting in accordance with regulations promulgated by the State Board of Health, if the order available to the personnel is in a format approved by the Division of Health of the Department of Health and Human Services.

(b) This section shall not authorize emergency medical personnel to follow an Emergency Medical Services Do Not Resuscitate Order for any patient who is able to and does express to the personnel the desire to be resuscitated prior to cardiac or respiratory arrest.

History. Acts 1993, No. 1101, § 3.

20-13-904. Adherence to Do Not Resuscitate Protocol — Transfer of patients.

(a) Emergency medical services personnel other than physicians shall comply with the Do Not Resuscitate Protocol when presented with either Do Not Resuscitate Identification approved by the Division of Health of the Department of Health and Human Services, an oral Do Not Resuscitate Order issued directly by a physician, or a written Do Not Resuscitate Order entered on a form prescribed by the division.

(b) An attending physician or a health care facility that receives a patient from emergency medical services with a valid Do Not Resuscitate Identification which the patient or his or her health care proxy does not remand by written or oral statement and that is unwilling or unable to comply with a Do Not Resuscitate Order shall take all reasonable steps to transfer that person possessing Do Not Resuscitate Identification to another physician or to a health care facility in which the Do Not Resuscitate Order will be followed.

History. Acts 1993, No. 1101, § 4.

20-13-905. Patient's decision — Effect on insurance.

(a) Death resulting from the withholding or withdrawal of emergency life-sustaining procedures pursuant to the Do Not Resuscitate Protocol and in accordance with this subchapter is not for any purpose a suicide or homicide.

(b) The possession of Do Not Resuscitate Identification pursuant to this subchapter does not affect in any manner the sale, procurement, or issuance of any policy of life insurance nor does it modify the terms of an existing policy of life insurance. A policy of life insurance is not legally impaired or invalidated in any manner by the withholding or withdrawal of emergency life-sustaining procedures from an insured person possessing Do Not Resuscitate Identification, notwithstanding any term of the policy to the contrary.

(c) A physician, health care facility, or other health care provider and a health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital plan may not require a person to possess Do Not Resuscitate Identification as a condition for being insured for or receiving health care services.

(d) This subchapter does not create a presumption concerning the intention of an individual who does not possess Do Not Resuscitate Identification with respect to the use, withholding, or withdrawal of emergency life-sustaining procedures.

(e) This subchapter does not increase or decrease the right of a patient to make decisions regarding the use of emergency life-sustaining procedures if the patient is able to do so nor does this subchapter impair or supersede any right or responsibility that a person has to effect the withholding or withdrawal of medical care in any lawful manner. In that respect, the provisions of this subchapter are cumulative.

(f) This subchapter does not authorize or approve mercy killing.

History. Acts 1993, No. 1101, § 5.

20-13-906. Rulemaking authority.

(a) Upon the adoption of an Emergency Medical Services Do Not Resuscitate Protocol by the State Board of Health, the Division of Health of the Department of Health and Human Services may adopt a standard form of Do Not Resuscitate Identification to be used statewide.

(b) The division shall adopt rules to administer the provisions of this subchapter.

History. Acts 1993, No. 1101, § 6.

20-13-907. Reciprocity.

(a) An advance directive executed in another state shall be deemed to be validly executed for the purposes of this subchapter if executed in compliance with the laws of the State of Arkansas or the laws of the state where executed.

(b) Such advance directives shall be construed in accordance with the laws of the State of Arkansas.

History. Acts 1993, No. 1101, § 7.

20-13-908. Penalties.

(a) A physician who willfully fails to transfer a patient in accordance with § 20-13-904 is guilty of a Class A misdemeanor.

(b) A person who purposely conceals, cancels, defaces, or obliterates the Do Not Resuscitate Identification of another without the consent of the possessor or who falsifies or forges a revocation of the Do Not Resuscitate Identification of another is guilty of a Class A misdemeanor.

(c) A person who falsifies or forges the Do Not Resuscitate Identification of another or purposely conceals or withholds personal knowledge of a revocation of Do Not Resuscitate Identification with the intent to cause the use, withholding, or withdrawal of life-sustaining procedures is guilty of a Class D felony.

History. Acts 1993, No. 1101, § 8.

SUBCHAPTER 10 — AMBULANCE SERVICES

SECTION.

- 20-13-1001. License required.
- 20-13-1002. License application and renewal.
- 20-13-1003. Choice-of-care facility — Reporting requirements — Insurance coverage.

SECTION.

- 20-13-1004. Advertising restrictions — Service area.
- 20-13-1005. Revocation of license.
- 20-13-1006. Regulation of mass casualty incidents.

20-13-1001. License required.

(a) No person shall furnish, operate, maintain, conduct, advertise, or in any way engage in or profess to engage in the business of providing emergency transport of patients upon the streets and highways of Arkansas unless that person holds a valid ambulance service license or provisional ambulance service license issued by the Division of Health of the Department of Health and Human Services.

(b) This section shall not operate to alter the application of the “Good Samaritan Law”, § 17-95-101.

History. Acts 1997, No. 1255, § 1.

20-13-1002. License application and renewal.

(a)(1) An application for the issuance or renewal of an ambulance service license or a provisional ambulance service license shall be made on forms provided by the Division of Health of the Department of Health and Human Services and shall be accompanied by any fee as required by law or by regulations promulgated by the division.

(2) Each license shall be renewed annually.

(b) Each licensee shall be issued a service license in one (1) of the classifications set forth by the division.

(c) The division shall promulgate regulations for the licensure and renewal of an ambulance service license.

History. Acts 1997, No. 1255, § 2.

20-13-1003. Choice-of-care facility — Reporting requirements — Insurance coverage.

(a)(1)(A) A licensee under this subchapter shall transport any patient to the care facility of the patient's choice within the service area of the ambulance.

(B) If the patient is unable to make a choice and if the attending physician is present and has expressed a choice-of-care facility within the service area, the licensee shall comply with the attending physician's choice.

(C) If the licensee is unable to make a choice, the attending physician is not present or has not expressed a choice of facility, or there is no hospital in the service area of the ambulance, the licensee shall transport the patient to the nearest appropriate care facility.

(2) The licensee shall provide the care facility where the patient was transported with a copy of an ambulance service encounter form prescribed by the Division of Health of the Department of Health and Human Services, which shall become a part of the patient's medical records.

(b) Each licensee shall report in a format approved by the division every request which results in the dispatch of a vehicle.

(c)(1) Each licensee shall have in force and effect liability insurance coverage issued by an insurance company licensed to do business in the State of Arkansas for each vehicle owned and operated by or for the applicant or licensee.

(2) The division shall maintain evidence of proof of current liability insurance coverage for each vehicle of each licensee.

History. Acts 1997, No. 1255, § 3.

20-13-1004. Advertising restrictions — Service area.

(a) An ambulance service shall not in any way advertise to the general public the service areas, skills, procedures, or personnel certi-

fication levels which it cannot provide on every emergency request, twenty-four (24) hours a day, seven (7) days a week.

(b) The service area shall be clearly identified in writing and shall be on file with the Division of Health of the Department of Health and Human Services.

History. Acts 1997, No. 1255, § 5.

20-13-1005. Revocation of license.

Three (3) formal citations during the license term for failure to comply with this subchapter and any regulations promulgated by the Division of Health of the Department of Health and Human Services in regard to ambulance services shall result in revocation of the ambulance service license.

History. Acts 1997, No. 1255, § 4.

20-13-1006. Regulation of mass casualty incidents.

In mass casualty incidents, which overwhelm the region's available resources, the Division of Health of the Department of Health and Human Services shall promulgate regulations which establish procedures for the transportation of patients by ambulances.

History. Acts 1997, No. 1255, § 6.

SUBCHAPTER 11 — CRIMINAL RECORDS CHECK

SECTION.	SECTION.
20-13-1101. Definitions.	20-13-1107. Procedure for challenge.
20-13-1102. Mandatory criminal records checks for emergency medical technicians.	20-13-1108. Additional checks.
20-13-1103. Application — Fee — Determination of disqualification.	20-13-1109. Report and index — Forms — Database.
20-13-1104. Form — State and national records check.	20-13-1110. Refusal of check as grounds for disqualification.
20-13-1105. Response — File copies.	20-13-1111. Notice of convictions.
20-13-1106. Disqualifying offenses — Waiver.	20-13-1112. Forms — Regulations.
	20-13-1113. Confidentiality.
	20-13-1114. Immunity.
	20-13-1115. Applicability of subchapter.

Effective Dates. Acts 1999, No. 666, § 14: Mar. 17, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly, that sometimes persons providing care in the prehospital environment have criminal histories that impair their ability to provide adequate care; that injuries inflicted by these caretakers in positions of trust are devastating to the sense of

well-being in our communities; and that it is crucial to the health, safety, and welfare of the citizens of the State of Arkansas that a criminal history check be conducted on all persons providing care in the prehospital environment so that those persons who are a danger can be identified. Therefore, an emergency is declared to exist and this Act being immediately necessary for the preservation of the pub-

lic peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act

includes technical corrects to Act 923 of 2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and Compensation Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid confusion this act must also effective on July 1, 2003. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003.”

20-13-1101. Definitions.

As used in this subchapter:

(1) “Applicant” means any individual seeking Arkansas emergency medical technician certification or recertification;

(2) “Bureau” means the Identification Bureau of the Department of Arkansas State Police;

(3) “Care” means treatment, services, assistance, education, training, instruction, or supervision in the prehospital emergency medical systems environment;

(4) “Certification” means the official acknowledgment by the Division of Health of the Department of Health and Human Services that an individual has demonstrated competence to perform the emergency medical services required for certification as provided by the Arkansas EMS Rules and Regulations;

(5) “Certifying agency” means the government agency charged with certifying the qualified individual to provide prehospital care;

(6) “Division” means the Division of Health of the Department of Health and Human Services;

(7) “Division of EMS and Trauma Systems” means the organization within the Division of Health of the Department of Health and Human Services responsible for the enforcement of emergency medical services legislation within the State of Arkansas;

(8) “Emergency medical services system” means the transportation and medical care provided to the ill or injured prior to arrival at a medical facility by a certified emergency medical technician or other health care provider and the continuation of the initial emergency care within a medical facility subject to the approval of the medical staff and governing board of that facility;

(9) “Emergency medical technician (EMT)” means the individual who has been certified as an EMT, EMT-ambulance, EMT-intermediate or EMT-paramedic and who may perform those services equivalent to level of certification;

(10) “Index” means the database maintained by the bureau of criminal records checks that have been conducted on applicants for EMT certification and recertification;

(11) "National criminal history check" means a review of national criminal records maintained by the Federal Bureau of Investigation based on fingerprint identification or other positive identification methods;

(12) "Recertification" means the official acknowledgment by the division that an individual has demonstrated competence to perform the emergency medical services required for recertification as provided by Arkansas EMS Rules and Regulations;

(13) "Report" means a statement of the criminal history of an applicant issued by the bureau; and

(14) "State criminal history check" means a review of state criminal records conducted by the bureau using the Arkansas Crime Information Center.

History. Acts 1999, No. 666, § 1.

20-13-1102. Mandatory criminal records checks for emergency medical technicians.

(a)(1) Any applicant applying for initial certification shall complete a criminal history check form and shall request the Identification Bureau of the Department of Arkansas State Police to conduct a state or national criminal history check, or both, on the applicant.

(2) The applicant shall pay all appropriate fees for the state or national criminal history check, or both, as set forth by the bureau.

(3) The applicant shall attach the criminal history check form to the Arkansas EMT certification application.

(4) Division of EMS and Trauma Systems of the Division of Health of the Department of Health and Human Services shall forward the history check form and the appropriate fees to the bureau.

(b) The bureau shall conduct a state or national criminal history check, or both, on the applicant, and upon completion of the criminal history check, the bureau shall issue a report to the division.

(c) The division shall determine whether the applicant is disqualified from certification based on the report of the applicant's criminal history and forward its determination to the applicant directly.

History. Acts 1999, No. 666, § 2.

20-13-1103. Application — Fee — Determination of disqualification.

(a)(1) Any applicant applying for recertification who holds a current Arkansas EMT certification before July 1, 1999, shall complete a criminal history check form no later than his or her current expiration date or July 1, 2001, whichever comes first, and shall request the Identification Bureau of the Department of Arkansas State Police to conduct a state or national criminal history check, or both, on the applicant.

(2) The applicant shall pay all appropriate fees for the state or national criminal history check, or both, as set forth by the bureau.

(3) The applicant shall attach the criminal history check form to the Arkansas EMT certification application.

(4) The Division of EMS and Trauma Systems of the Division of Health of the Department of Health and Human Services shall forward the criminal history check form and the appropriate fees to the bureau.

(b) The bureau shall conduct a state or national criminal history check, or both, on the applicant, and upon completion of the criminal history check, the bureau shall issue a report to the division.

(c) The division shall determine whether the applicant is disqualified from certification based on the report of the applicant's criminal history and forward its determination to the applicant directly.

History. Acts 1999, No. 666, § 2.

20-13-1104. Form — State and national records check.

(a) A request for a state or national criminal history records check, or both, on a person shall include a completed form provided by the Division of EMS and Trauma Systems of the Division of Health of the Department of Health and Human Services and as required by the Identification Bureau of the Department of Arkansas State Police.

(b) Applicants for initial certification or recertification shall complete a criminal history check form as provided by the division and accepted by the bureau when requested by the division but shall be required to pay all appropriate fees one (1) time only and not at each recertification.

(c)(1) If the applicant can provide proof of continuous residency in the State of Arkansas for the past five (5) years or has been certified continuously for the past five (5) years as an Arkansas emergency medical technician, then the applicant shall be required to have only a state criminal history check completed.

(2) If an applicant is requesting initial Arkansas emergency medical technician certification and is from another state or if the applicant cannot provide proof of continuous residency in the State of Arkansas for the past five (5) years, the applicant shall be required to have both a state and a national criminal history check completed.

(d)(1) The division shall process all applications that have the criminal history checks form attached to the Arkansas EMT application but reserves the right to suspend or revoke the applicant's certification or recertification if the applicant is found in the bureau's index.

(2) Any currently certified Arkansas emergency medical technician who has, prior to March 17, 1999, submitted criminal background information specific to offenses listed by the applicant on the Arkansas EMT certification application to the division and has been allowed to become certified based upon the information provided by the applicant, that certification shall not be suspended during the request for waiver.

History. Acts 1999, No. 666, §§ 2, 5.

20-13-1105. Response — File copies.

(a) After receipt of a request for a criminal history check, the Identification Bureau of the Department of Arkansas State Police shall make reasonable efforts to respond to requests for state or national criminal history checks, or both, within twenty (20) calendar days.

(b) The Division of EMS and Trauma Systems of the Division of Health of the Department of Health and Human Services shall maintain on file, subject to inspection by the Arkansas Crime Information Center or the bureau, a copy of each criminal records check completed by all applicants requesting state certification or recertification.

History. Acts 1999, No. 666, §§ 3, 6.

20-13-1106. Disqualifying offenses — Waiver.

(a) Except as provided in subdivision (e)(1) of this section, the Division of EMS and Trauma Systems of the Division of Health of the Department of Health and Human Services shall issue a determination that a person is disqualified from certification or recertification if the person has been found guilty of or has pleaded guilty or nolo contendere to any of the offenses listed in subsection (b) of this section, including offenses for which the record has been expunged. However, the Division of EMS and Trauma Systems shall forward a request for a waiver to the Director of the Division of Health of the Department of Health and Human Services on all applicants who have been convicted of the crimes listed in subsection (b) of this section if five (5) years have passed since the conviction, if five (5) years have passed since release from custodial confinement, or if the applicants are currently certified emergency medical technicians, prior to making the final determination on certification or recertification. These individuals will not be suspended prior to the director's making the final determination.

(b)(1) Capital murder as prohibited in § 5-10-101;

(2) Murder in the first degree as prohibited in § 5-10-102 and murder in the second degree as prohibited in § 5-10-103;

(3) Manslaughter as prohibited in § 5-10-104;

(4) Negligent homicide as prohibited in § 5-10-105;

(5) Kidnapping as prohibited in § 5-11-102;

(6) False imprisonment in the first degree as prohibited in § 5-11-103;

(7) Permanent detention or restraint as prohibited in § 5-11-106;

(8) Robbery as prohibited in § 5-12-102;

(9) Aggravated robbery as prohibited in § 5-12-103;

(10) Battery in the first degree as prohibited in § 5-13-201;

(11) Aggravated assault as prohibited in § 5-13-204;

(12) Introduction of controlled substance into the body of another person as prohibited in § 5-13-210;

(13) Terroristic threatening in the first degree as prohibited in § 5-13-301(a);

- (14) Rape as prohibited in § 5-14-103;
- (15) Sexual indecency with a child as prohibited in § 5-14-110;
- (16) Sexual assault in the first degree, second degree, third degree, and fourth degree as prohibited in §§ 5-14-124 — 5-14-127;
- (17) Incest as prohibited in § 5-26-202;
- (18) Offenses against the family as prohibited in §§ 5-26-303 — 5-26-306;
- (19) Endangering the welfare of an incompetent person in the first degree as prohibited in § 5-27-201;
- (20) Endangering the welfare of a minor in the first degree as prohibited in § 5-27-203;
- (21) Permitting child abuse as prohibited in § 5-27-221(a)(1) and (3);
- (22) Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, or use of a child or consent to use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child as prohibited in §§ 5-27-303 — 5-27-305, 5-27-402, and 5-27-403;
- (23) Felony adult abuse as prohibited in § 5-28-103;
- (24) Theft of property as prohibited in § 5-36-103;
- (25) Theft by receiving as prohibited in § 5-36-106;
- (26) Arson as prohibited in § 5-38-301;
- (27) Burglary as prohibited in § 5-39-201;
- (28) Felony violation of the Uniform Controlled Substances Act, § 5-64-101 — 5-64-608, as prohibited in § 5-64-401;
- (29) Promotion of prostitution in the first degree as prohibited in § 5-70-104;
- (30) Stalking as prohibited in § 5-71-229;
- (31) Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401 to commit any of the offenses listed in this subsection;
- (32) Fourth or subsequent driving while intoxicated violations that constitute felony offenses under § 5-65-111(b)(3) and (4);
- (33) Computer child pornography as prohibited in § 5-27-603; and
- (34) Computer exploitation of a child in the first degree as prohibited in § 5-27-605.

(c) An applicant shall not be disqualified from certification or recertification when the applicant has been found guilty of or has pleaded guilty or nolo contendere to a misdemeanor if the offense:

(1) Did not involve exploitation of an adult, abuse of a person, neglect of a person, or sexual contact; or

(2) Was not committed while performing the duties of an emergency medical technician.

(d)(1) The provisions of this section may be waived by the Department of Health and Human Services upon written request by the person who is the subject of the criminal history check.

(2) The written request for waiver shall be mailed to the director within fifteen (15) calendar days after receipt of the determination by the Division of Health of the Department of Health and Human Services.

(3) Factors to be considered before granting a waiver shall include, but not be limited to:

- (A) The age at which the crime was committed;
- (B) The circumstances surrounding the crime;
- (C) The length of time since the adjudication of guilt;
- (D) The person's subsequent work history;
- (E) The person's employment references;
- (F) The person's character references; and

(G) Any other evidence demonstrating that the person does not pose a threat to the health or safety of persons to be cared for.

(e)(1) For purposes of this section, an expunged record of a conviction or plea of guilty or nolo contendere to an offense listed in subsection (b) of this section shall not be considered a conviction, guilty plea, or nolo contendere plea to the offense unless the offense is also listed in subdivision (e)(2) of this section.

(2) Because of the serious nature of the offenses and the close relationship to the type of work that is to be performed, the following shall result in permanent disqualification:

- (A) Capital murder as prohibited in § 5-10-101;
- (B) Murder in the first degree as prohibited in § 5-10-102 and murder in the second degree as prohibited in § 5-10-103;
- (C) Kidnapping as prohibited in § 5-11-102;
- (D) Rape as prohibited in § 5-14-103;
- (E) Sexual assault in the first degree as prohibited in § 5-14-124 and sexual assault in the second degree as prohibited in § 5-14-125;
- (F) Endangering the welfare of a minor in the first degree as prohibited in § 5-27-203 and endangering the welfare of a minor in the second degree as prohibited in § 5-27-204;
- (G) Incest as prohibited in § 5-26-202;
- (H) Arson as prohibited in § 5-38-301;
- (I) Endangering the welfare of an incompetent person in the first degree as prohibited in § 5-27-201; and
- (J) Adult abuse that constitutes a felony as prohibited in § 5-28-103.

History. Acts 1999, No. 666, § 4; 2003, No. 1087, § 18; 2003, No. 1383, § 1; 2003, No. 1473, § 39; 2005, No. 1773, §§ 1, 2; 2005, No. 1923, § 5.

Amendments. The 2003 amendment by No. 1087 added present (b)(33) and (34).

The 2003 amendment by No. 1383 rewrote (b)(14) and (15); deleted former (b)(15) and (17); added present (b)(16) and redesignated the remaining subdivisions

accordingly; and made stylistic changes in present (b)(22) and (28).

The 2003 amendment by No. 1473 inserted "and (4)" in present (b)(32).

The 2005 amendment by No. 1923 inserted "Except as provided in subdivision (e)(1) of this section, the" in (a); and added (e).

The 2005 amendment by No. 1773 added "including offenses for which the record has been expunged" in the first

sentence in (a); inserted the subdivision (1) designation in (c) and made related changes; and added (c)(2).

RESEARCH REFERENCES

UALR L.J. Survey of Legislation, 2003 Law, Computer Crimes, 26 UALR L.J. Arkansas General Assembly, Criminal 361.

20-13-1107. Procedure for challenge.

(a) A person may challenge the completeness or accuracy of criminal history information pursuant to § 12-12-1013.

(b) The Division of EMS and Trauma Systems of the Division of Health of the Department of Health and Human Services shall follow the established procedures for applicants to challenge determinations in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., as stated in the current EMS Rules and Regulations.

History. Acts 1999, No. 666, § 7.

20-13-1108. Additional checks.

The Division of EMS and Trauma Systems of the Division of Health of the Department of Health and Human Services maintains the right to conduct additional state or national criminal background checks at the cost of the division on applicants or Arkansas-certified emergency medical technicians under investigation for violation of current emergency medical services laws or rules and regulations.

History. Acts 1999, No. 666, § 3.

20-13-1109. Report and index — Forms — Database.

(a) The Identification Bureau of the Department of Arkansas State Police shall furnish a report to the Division of EMS and Trauma Systems of the Division of Health of the Department of Health and Human Services upon completion of each criminal history check.

(b) The bureau shall maintain an index of the results of each applicant's criminal history check.

(c) The division shall develop forms which are approved by the bureau to be used for criminal history checks conducted under this subchapter.

(d) The division shall develop and maintain a database of determinations regarding applicants.

History. Acts 1999, No. 666, § 6.

20-13-1110. Refusal of check as grounds for disqualification.

(a) If an applicant fails or refuses to cooperate in obtaining criminal records checks, such circumstances shall be grounds to deny or revoke the applicant's certification.

(b) Any applicant failing to comply with this subchapter shall be denied certification or recertification until such time compliance is made with this subchapter.

History. Acts 1999, No. 666, §§ 4, 7.

20-13-1111. Notice of convictions.

An Arkansas-certified emergency medical technician shall notify the Division of EMS and Trauma Systems of the Division of Health of the Department of Health and Human Services of any conviction of or plea of guilty or nolo contendere to any offenses listed in § 20-13-1106(b) within ten (10) calendar days after the conviction or guilty plea or plea of nolo contendere.

History. Acts 1999, No. 666, § 4.

20-13-1112. Forms — Regulations.

The Arkansas Crime Information Center, the Identification Bureau of the Department of Arkansas State Police, and the Division of EMS and Trauma Systems of the Division of Health of the Department of Health and Human Services shall cooperate to prepare forms and promulgate consistent regulations as necessary to implement this subchapter.

History. Acts 1999, No. 666, § 7.

20-13-1113. Confidentiality.

(a) All reports obtained under this subchapter are confidential and are restricted to the exclusive use of the Arkansas Crime Information Center, the Identification Bureau of the Department of Arkansas State Police, the Division of EMS and Trauma Systems of the Division of Health of the Department of Health and Human Services, and the person who is the subject of the report.

(b) The information contained in reports shall not be released or otherwise disclosed to any other person or agency except by court order and is specifically exempt from disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq., except that the division shall furnish determinations to qualified entities.

History. Acts 1999, No. 666, § 8.

20-13-1114. Immunity.

Individuals are immune from suit or liability for damages for acts or omissions other than malicious acts or omissions occurring in the performance of duties imposed by this subchapter.

History. Acts 1999, No. 666, § 9.

20-13-1115. Applicability of subchapter.

This subchapter shall not apply to persons who render care subject to professional licenses obtained pursuant to:

- (1) Section 17-27-101 et seq., regarding licensed professional counselors;
- (2) Section 17-103-101 et seq., regarding social workers;
- (3) Section 17-82-101 et seq., regarding dentists;
- (4) Section 17-87-101 et seq., regarding nurses;
- (5) Section 17-88-101 et seq., regarding occupational therapists;
- (6) Section 17-92-101 et seq., regarding pharmacists;
- (7) Section 17-93-101 et seq., regarding physical therapists;
- (8) Section 17-95-101 et seq., regarding physicians and surgeons;
- (9) Section 17-96-101 et seq., regarding podiatrists;
- (10) Section 17-97-101 et seq., regarding psychologists and psychological examiners;
- (11) Section 17-100-101 et seq., regarding speech-language pathologists and audiologists; or
- (12) Section 20-10-401 et seq., regarding nursing home administrators.

History. Acts 1999, No. 666, § 10.

SUBCHAPTER 12 — VACCINATION PROGRAM FOR FIRST RESPONDERS**SECTION.**

20-13-1201. Definitions.

20-13-1202. Vaccination program for first responders.

Effective Dates. Acts 2003, No. 1401, § 2: Apr. 15, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that first responders to a bioterrorism attack may be subjected to vaccine-preventable diseases and the first responders are in need of vaccinations to protect them against vaccine-preventable diseases in view of a bioterrorism attack and it is essential to the welfare of the State of Arkansas and its citizens to protect its first responders against a bioterrorism

attack. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

20-13-1201. Definitions.

As used in this subchapter:

(1) "Bioterrorism" means the intentional use of any microorganism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology or any naturally occurring or bioengineered component of any microorganism, virus, infectious substance, or biological product to cause or attempt to cause death, disease, or other biological malfunction in any living organism;

(2) "Division" means the Division of Health of the Department of Health and Human Services;

(3) "Director" means the Director of the Division of Health of the Department of Health and Human Services;

(4) "Disaster location" means any geographical location where a bioterrorism attack, terrorist attack, catastrophic or natural disaster, or other emergency occurs; and

(5) "First responders" means state and local law enforcement personnel, fire department personnel, and emergency medical personnel who will be deployed to bioterrorism attacks, terrorist attacks, catastrophic or natural disasters, and emergencies.

History. Acts 2003, No. 1401, § 1.

20-13-1202. Vaccination program for first responders.

(a) The Division of Health of the Department of Health and Human Services shall offer a vaccination program for first responders who may be exposed to infectious diseases while deployed to disaster locations.

(b) Participation in the vaccination program shall be voluntary by the first responders, except for first responders who are classified as having occupational exposure to bloodborne pathogens as defined by the Occupational Safety and Health Administration Standard contained in 29 C.F.R. 1910.1030, as in effect on January 1, 2003, who shall be required to take the designated vaccinations or as otherwise required by law.

(c) The division shall notify first responders of the availability of the vaccination program and shall provide first responders with educational materials on ways to prevent exposure to infectious disease.

(d) The division may contract with county and local health departments, not-for-profit home health care agencies, hospitals, and physicians to administer a vaccination program for first responders.

(e)(1) This section shall be effective upon receipt of federal funding or federal grants, or both, for administering a vaccination program for first responders.

(2) Upon receipt of federal funding, the division shall make available the vaccines required for first responders under this section.

History. Acts 2003, No. 1401, § 1.

SUBCHAPTER 13 — PUBLIC ACCESS TO AUTOMATED EXTERNAL
DEFIBRILLATION ACT

SECTION.

- 20-13-1301. Title.
- 20-13-1302. Legislative intent.
- 20-13-1303. Definitions.
- 20-13-1304. Access by the public to
defibrillators.

SECTION.

- 20-13-1305. Automated external defibril-
lator use and tort immu-
nity.
- 20-13-1306. Health spas.

A.C.R.C. Notes. References to “this subchapter” in §§ 20-13-1301 — 20-13-1305 may not apply to § 20-13-1306, which was enacted subsequently.

20-13-1301. Title.

This subchapter may be cited as the “Public Access to Automated External Defibrillation Act”.

History. Acts 2005, No. 273, § 1.

20-13-1302. Legislative intent.

The General Assembly finds that early defibrillation can sustain the life of and temporarily stabilize a person in cardiac arrest, thus helping to preserve the Arkansas family. It is the intent of the General Assembly that the public have access to automated external defibrillators for the purpose of saving the lives of persons in cardiac arrest.

History. Acts 2005, No. 273, § 1.

20-13-1303. Definitions.

As used in this subchapter:

- (1) “Automated external defibrillator” means a device that:
 - (A) Is used to administer an electric shock through the chest wall to the heart;
 - (B) Has built-in computers within the device to assess the patient’s heart rhythm, judge whether defibrillation is needed, and then administer the shock;
 - (C) Has audible or visual prompts, or both, to guide the user through the process;
 - (D) Has received approval from the United States Food and Drug Administration of its premarket modification, filed pursuant to 21 U.S.C. § 360(k);
 - (E) Is capable of recognizing the presence or absence of ventricular fibrillation and rapid ventricular tachycardia and is capable of determining without intervention by an operator whether defibrillation should be performed; and

(F) Upon determining that defibrillation should be performed, either automatically charges and delivers an electrical impulse to an individual's heart or charges and delivers an electrical impulse at the command of the operator;

(2) "Cardiac arrest" means a condition, often sudden, that is due to abnormal heart rhythms called arrhythmias. It is generally the result of some underlying form of heart disease;

(3) "Cardiopulmonary resuscitation" means a combination of rescue breathing and chest compressions and external cardiac massage used to sustain a person's life until advanced assistance arrives;

(4) "Defibrillation" means administering an electrical impulse to an individual's heart in order to stop ventricular fibrillation or rapid ventricular tachycardia;

(5) "Emergency medical services" means the transportation and medical care provided the ill or injured prior to arrival at a medical facility by a certified emergency medical technician or other health care provider and continuation of the initial emergency care within a medical facility subject to the approval of the medical staff and governing board of that facility;

(6) "Person" means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not; and

(7) "Ventricular fibrillation" means the most common arrhythmia that causes cardiac arrest. It is a condition in which the heart's electrical impulses suddenly become chaotic, often without warning, causing the heart's pumping action to stop abruptly.

History. Acts 2005, No. 273, § 1.

20-13-1304. Access by the public to defibrillators.

(a) In order to ensure the public health and safety, a person or entity that acquires an automated external defibrillator shall ensure that:

(1) Expected automated external defibrillator users complete appropriate knowledge and skills courses at least one (1) time every two (2) years in cardiopulmonary resuscitation and automated external defibrillator use based upon current American Heart Association scientific guidelines, standards, and recommendations for providing cardiopulmonary resuscitation and the use of automated external defibrillators as published in American Heart Association, American Red Cross, or equivalent course materials;

(2) The defibrillator is maintained and tested according to the manufacturer's operational guidelines and instructions; and

(3) Any person who renders emergency care or treatment on a person in cardiac arrest by using an automated external defibrillator activates the emergency medical services system as soon as possible and immediately reports any clinical use of the automated external defibrillator to the medical provider responding to the emergency.

(b) Any person or entity that acquires an automated external defibrillator shall notify an agent of emergency communications, 911, or vehicle dispatch center of the existence, location, and type of automated external defibrillator.

History. Acts 2005, No. 273, § 1.

20-13-1305. Automated external defibrillator use and tort immunity.

(a) Any person or entity that in good faith and without compensation renders emergency care or treatment by the use of an automated external defibrillator is immune from civil liability for any personal injury as a result of the care or treatment or as a result of any act or failure to act in providing or arranging further medical treatment if the person acts as an ordinary, reasonably prudent person would have acted under the same or similar circumstances.

(b) The immunity from civil liability for any personal injury under subsection (a) of this section includes:

(1) A physician or medical facility that is involved with automated external defibrillator placement;

(2) Any person or entity that provides cardiopulmonary resuscitation and automated external defibrillator training to the person or entity acquiring an automated external defibrillator; and

(3) The person or entity responsible for the location where the automated external defibrillator is located or used.

(c) The immunity from civil liability under subsection (a) of this section does not apply if the personal injury results from the gross negligence or willful or wanton misconduct of the person rendering the emergency care.

(d) The requirements of § 20-13-1304 do not apply to any individual using an automated external defibrillator in an emergency setting if that individual is acting as a “Good Samaritan” under the provisions of either § 17-95-101 or § 17-95-106.

History. Acts 2005, No. 273, § 1.

20-13-1306. Health spas.

(a) As used in this section, “health spa” means any person, firm, corporation, organization, club, or association engaged in the sale of:

(1) Memberships in a program of physical exercise that includes the use of one (1) or more sauna, whirlpool, weightlifting room, massage, steam room, or exercising machine or device; or

(2) The right or privilege to use exercise equipment or facilities such as a sauna, whirlpool, weightlifting room, massage, steam room, or exercising machine or device, including, but not limited to:

(A) For-profit businesses, firms, corporations, organizations, clubs, or associations;

(B) Bona fide nonprofit organizations, including, but not limited to, the Young Men's Christian Association, Young Women's Christian Association, or similar organizations whose functions as health spas are only incidental to the overall functions and purposes;

(C) Any organization primarily operated for the purpose of teaching a particular form of martial arts such as judo or karate;

(D) Any college or university fitness center;

(E) Any country club; or

(F) Weight-loss or weight-control services which do not provide physical exercise facilities and which do not obligate the customer for more than twenty-five (25) months.

(b)(1) Each health spa shall have at least one (1) automated external defibrillator on the premises.

(2) The defibrillator shall at all times be placed in the location that best provides accessibility to staff, members, and guests.

(3) At all times that a spa is open for business, the spa shall ensure that at least one (1) employee who has completed a knowledge and skills course as required under § 17-95-604 [repealed] is assigned to be on duty.

(c) No cause of action against a health spa or its employees may arise in connection with the use or nonuse of an automated external defibrillator unless the health spa has:

(1) Failed to purchase an automated external defibrillator as required under this section; or

(2) Acted with gross negligence in the use of an automated external defibrillator.

(d) If a health spa does not comply with this section, any contract for health spa services shall be voidable at the option of the buyer.

History. Acts 2005, No. 1199, § 1.

1305 may not apply to this section, which

A.C.R.C. Notes. References to "this subchapter" in §§ 20-13-1301 — 20-13-

was enacted subsequently.

CHAPTER 14

DISABLED PERSONS

SUBCHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]
2. GOVERNOR'S COMMISSION ON PEOPLE WITH DISABILITIES.
3. RIGHTS GENERALLY.
4. AMPUTEE DISABLED. [REPEALED.]
5. EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS.
6. ARCHITECTURAL BARRIERS ACCESSIBILITY. [REPEALED.]
7. HEAD INJURIES.

RESEARCH REFERENCES

ALR. Educational placement of handicapped children. 23 ALR 4th 740.

State legislation forbidding discrimina-

tion in housing on account of physical handicap. 28 ALR 4th 685.

Damages and other relief under state

legislation forbidding job discrimination on account of handicap. 78 ALR 4th 435.

Discrimination "because of handicap" or "on basis of handicap" under state statutes prohibiting job discrimination on account of handicap. 81 ALR 4th 144.

What constitutes handicap under state

legislation forbidding job discrimination on account of handicap. 82 ALR 4th 26.

Validity and construction of state statutes requiring construction of handicapped access facilities in buildings open to public. 82 ALR 4th 121.

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

SUBCHAPTER 2 — GOVERNOR'S COMMISSION ON PEOPLE WITH DISABILITIES

SECTION.

20-14-201. Legislative policy.

20-14-202. Creation — Members.

20-14-203. Ex officio members.

20-14-204. Officers.

20-14-205. Meetings.

SECTION.

20-14-206. Powers and duties.

20-14-207. Executive board.

20-14-208. Subcommittees.

20-14-209. Administrative support.

20-14-210. Gifts, grants, and donations.

Effective Dates. Acts 1985, No. 911, § 13; Apr. 15, 1985. Emergency clause provided: "In recognition of the pressing problems of people with disabilities, it is hereby found and determined by the General Assembly that a special Commission is needed to address these problems and it is imperative that this Commission com-

mence operation immediately and that this Act is immediately necessary to so provide. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

20-14-201. Legislative policy.

This law is enacted to provide for a Governor's commission to carry on a continuing program to promote the interests of persons with disabilities in this state, in recognition that:

(1) Arkansas has a public awareness of, and community interest in, the problems of persons with disabilities and that the awareness and interest must be heightened in order to enhance understanding of their problems;

(2) There exists a need to assure that the special requirements of persons with disabilities are appropriately considered in state programs;

(3) Existing programs for persons with disabilities require coordination to eliminate fragmentation of responsibility; and

(4) There exists a critical need to provide individuals seeking information or assistance regarding services and programs for persons with

disabilities with a simple means of obtaining appropriate information and referrals.

History. Acts 1985, No. 911, § 1;
A.S.A. 1947, § 82-2908.

20-14-202. Creation — Members.

(a) There is created a commission to be known as the “Governor’s Commission on People with Disabilities” composed of a maximum of twenty-five (25) members appointed by the Governor, subject to confirmation by the Senate.

(b)(1) Thirteen (13) of the members shall be disabled persons.

(2) Membership terms shall be three (3) years. Each member shall be eligible for reappointment by the Governor for one (1) three-year term.

(3) Vacancies shall be filled for the remainder of the term of the original appointment by the Governor.

(4) Members shall receive no compensation for serving on the commission.

(5)(A) Any member who shall be absent from two (2) successive regular meetings shall be subject to removal from the commission in the event he or she shall fail to present to the Governor a satisfactory excuse for the absence. In that event, the unexcused absence shall constitute sufficient cause for removal.

(B) Any member who shall be absent from three (3) successive regular meetings for any reason other than illness of the member, verified by a written sworn statement by his or her attending physician and entered in the minutes of the commission, shall thereby forfeit and vacate his or her membership on the commission and the forfeiture and vacancy shall be forthwith certified to the Governor by the executive director of the commission.

(6) The vacancies shall be filled in the manner prescribed by law.

(c) The commission shall be nonpartisan, nonprofit, and shall not engage in the dissemination of partisan principles.

History. Acts 1985, No. 911, §§ 2, 6, 8, 11; A.S.A. 1947, §§ 82-2909, 82-2913, 82-2915, 82-2917.

911, § 2 provided, in part, that terms of office would be staggered so that not more than one-third of the membership would be appointed each year.

Publisher’s Notes. Acts 1985, No.

20-14-203. Ex officio members.

(a) The Director of the Department of Health and Human Services, the deputy director of the appropriate division as determined by the Director of the Department of Health and Human Services, and the Director of the Department of Workforce Education or any director, commissioner, or administrator of successors’ agencies shall serve as ex officio members of the Governor’s Commission on People with Disabilities.

(b) The Governor shall also appoint two (2) members of the General Assembly to serve as ex officio members of the commission.

History. Acts 1985, No. 911, § 3;
A.S.A. 1947, § 82-2910.

20-14-204. Officers.

(a) The Chair of the Governor's Commission on People with Disabilities shall be appointed biennially by the Governor and serve at the pleasure of the Governor.

(b) The chair shall select an executive board.

(c) The executive board is empowered to select from the commission membership a vice chair should such a position be desirable.

(d) The chair, or in his or her absence the vice chair, shall exercise general supervision of all commission affairs.

(e) The chair shall preside over all meetings of the commission and executive board, appoint subcommittees and chairs, and serve as an ex officio member of all subcommittees.

History. Acts 1985, No. 911, § 7;
A.S.A. 1947, § 82-2914.

20-14-205. Meetings.

(a) A notice of regular and special meetings shall be mailed to members of the Governor's Commission on People with Disabilities not less than ten (10) days in advance. An agenda for the meeting shall accompany the notice of meeting.

(b) A quorum shall consist of not less than one-third ($\frac{1}{3}$) of the membership plus one (1) additional member.

(c) The conduct of all meetings shall be governed by Robert's Rules of Order, Revised, unless a majority of those attending vote to lay rules aside for a particular meeting.

History. Acts 1985, No. 911, § 8;
A.S.A. 1947, § 82-2915.

20-14-206. Powers and duties.

The Governor's Commission on People with Disabilities shall:

(1) Advise and assist the Governor in developing policies designed to meet the needs of citizens with disabilities;

(2) Help coordinate state and private provider programs and activities relating to persons with disabilities;

(3) Cooperate with state agencies and private providers to assure that the services which the Governor and the General Assembly have authorized for persons with disabilities are, in fact, provided;

(4) Cooperate with and assist political subdivisions of the state and private providers in the development of local programs for persons with disabilities, including, but not limited to, coordination and community planning, information services, counseling services, dissemination of information, and volunteer activities;

(5) Stimulate community interest in the problems of persons with disabilities and promote public awareness of resources available for such persons;

(6) Refer persons seeking advice, assistance, and available services in connection with particular problems of persons with disabilities to the appropriate departments and agencies of the state and federal governments or to agencies providing services by contract with the governmental entities as well as other private providers;

(7) Consult and cooperate with universities, colleges, and educational institutions in the state for the development of courses of study for persons engaged in public and private programs for persons with disabilities;

(8) Make or cause to be made such studies of needs of persons with disabilities as may be appropriate;

(9) Serve as a clearinghouse for information relating to the needs of persons with disabilities;

(10) Sponsor conferences relating to problems of and services for persons with disabilities;

(11) Assist state and local governments in eliminating obstacles to dignity and achievement which persons with disabilities may face as a result of a government and society unaware of or insensitive to their needs;

(12) Examine federal, state, and local programs for persons with disabilities and provide assistance when greater coordination between federal, state, and local programs is needed; and

(13) Cooperate with the General Assembly and the President's Committee on Employment of People with Disabilities.

History. Acts 1985, No. 911, § 5; A.S.A. 1947, § 82-2912; Acts 1997, No. 208, § 15.

A.C.R.C. Notes. Acts 1997, No. 208, § 1, codified as § 22-4-408, provided: "LEGISLATIVE INTENT AND PURPOSE. The General Assembly hereby acknowledges that many of the laws relating to individuals with disabilities are antiquated, functionally outmoded, deroga-

tory, ambiguous or are inconsistent with more recently enacted provisions of the law. Consequently, it is the intent of the General Assembly and the purpose of this Act to clarify the relevant chapters of Titles 1, 6, 9, 13, 14, 16, 17, 20, 22, 23, and 27 of the Arkansas Code Annotated of 1987."

20-14-207. Executive board.

(a) The Chair of the Governor's Commission on People with Disabilities shall name an executive board from the membership consisting of no more than five (5) members, taking into consideration that consumer representation must be assured.

(b) The executive board shall be responsible for the following activities:

(1) Appointing, subject to the personnel law, such staff as is necessary to carry out the commission's objectives;

(2) Acting on behalf of the commission between regular meetings of the full commission;

(3) Establishing a schedule for regular commission meetings and holding such other meetings of the executive board as may be necessary;

(4) Preparing an annual plan of work for the commission, subject to the approval of the commission;

(5) Assuring that commission activities coordinate with those of other public and private agencies responsible for providing services to disabled citizens;

(6) Scheduling a public hearing on any commission-related matter if a hearing is required by state law or deemed necessary by the commission; and

(7) Establishing such subcommittees as may be necessary to carry out the powers and duties of the commission.

History. Acts 1985, No. 911, § 8;
A.S.A. 1947, § 82-2915.

20-14-208. Subcommittees.

(a) The Executive Board of the Governor's Commission on People with Disabilities shall establish such subcommittees as it determines necessary.

(b) Membership of subcommittees shall not be limited to members of the Governor's Commission on People with Disabilities.

(c) Subcommittees shall maintain written records of their activities and submit them to the commission chair.

History. Acts 1985, No. 911, § 10;
A.S.A. 1947, § 82-2916.

20-14-209. Administrative support.

(a) The appropriate division as determined by the Director of the Department of Health and Human Services or any other agency or division as the Governor shall designate shall provide administrative support to the Governor's Commission on People with Disabilities.

(b) A representative of the appropriate division as determined by the director or any other agency or division as the Governor shall designate shall be appointed as executive director to effect the coordination between the division and the Chair of the Governor's Commission on People with Disabilities in the arrangement of the support.

History. Acts 1985, No. 911, § 4;
A.S.A. 1947, § 82-2911.

20-14-210. Gifts, grants, and donations.

(a) The Governor's Commission on People with Disabilities may receive any gifts, grants, or donations made for any of the purposes of its program.

(b) The commission may disburse and administer the gifts, grants, and donations in accordance with the conditions established by the Executive Board of the Governor’s Commission on People with Disabilities.

History. Acts 1985, No. 911, § 12;
A.S.A. 1947, § 82-2918.

SUBCHAPTER 3 — RIGHTS GENERALLY

SECTION.	SECTION.
20-14-301. Policy.	dog.
20-14-302. Penalty.	20-14-305. Access to housing accommodations.
20-14-303. Rights generally.	20-14-306. Reasonable precautions by drivers.
20-14-304. Right to be accompanied by service animal — Penalty and restitution for killing or injuring a service animal or search and rescue	20-14-307. Signs for the disabled.
	20-14-308. Guide dog and service dog access.

A.C.R.C. Notes. References to “this subchapter” in §§ 20-14-301 through 20-14-306 may not apply to §§ 20-14-307 and 20-14-308 which were enacted subsequently.

RESEARCH REFERENCES

Ark. L. Rev. Flaccus, Handicap Discrimination Legislation, etc., 40 Ark. L. Rev. 261.

20-14-301. Policy.

(a) It is the policy of this state to accord visually handicapped, hearing impaired, and other physically handicapped persons all rights and privileges of other persons with respect to the use of public streets, highways, sidewalks, public buildings, public facilities, public carriers, public housing accommodations, public amusement and resort areas, and other public areas to which the public is invited, subject only to the limitations and conditions established by law and applicable to all persons and subject to the special limitations and conditions prescribed in this subchapter for visually handicapped, hearing impaired, and otherwise handicapped persons.

(b) It is further the policy of this state that visually handicapped, hearing impaired, or other physically handicapped persons shall be employed in state service, in the service of political subdivisions of this state, in the public schools, and in all other employment supported in whole or in part by public funds, on the same terms and conditions as persons who are not visually handicapped, hearing impaired, or otherwise handicapped, unless it is shown that the visual, hearing, or other handicap of a person prevents the performance of the work involved.

History. Acts 1973, No. 484, § 1; 1979, No. 574, § 1; A.S.A. 1947, § 82-2901.

20-14-302. Penalty.

Any person, firm, or corporation, or the agent of any person, firm, or corporation, who denies or interferes with the admittance to or enjoyment of public facilities and housing accommodations by a visually handicapped, hearing impaired, or other physically handicapped person or otherwise interferes with the rights of a visually handicapped, hearing impaired, or other physically handicapped person shall be guilty of a misdemeanor.

History. Acts 1973, No. 484, § 6; 1979, No. 574, § 1; A.S.A. 1947, § 82-2906.

20-14-303. Rights generally.

(a) Visually handicapped, hearing impaired, and other physically handicapped persons shall have the same rights and privileges as other persons to the full use and enjoyment of:

(1) The public streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places;

(2) All common carriers and other public conveyances or modes of transportation, whether by air, land, or water;

(3) All hotels, motels, lodging places, and housing accommodations;

(4) Other places of public accommodation, amusement, or resort; and

(5) All other places to which the general public is invited.

(b) The rights and privileges are subject only to the limitations and conditions established by law and applicable to all persons and subject to the special limitations and conditions prescribed in this subchapter with respect to visually handicapped, hearing impaired, and otherwise handicapped persons.

History. Acts 1973, No. 484, § 2; 1979, No. 574, § 1; A.S.A. 1947, § 82-2902.

20-14-304. Right to be accompanied by service animal — Penalty and restitution for killing or injuring a service animal or search and rescue dog.

(a) Every visually handicapped, hearing impaired, or other physically disabled person shall have the right to be accompanied by a service animal especially trained to do work or to perform tasks for the benefit of an individual with a disability in or upon any and all public ways, public places, and other public accommodations and housing accommodations prescribed in § 20-14-303 and shall not be required to pay any extra fee or charge for the service animal.

(b) However, any visually handicapped, hearing impaired, or other physically disabled person accompanied by a service animal in any public way, public place, public accommodation, or housing accommo-

dation shall be liable for any damage caused to the premises or facilities by the animal.

(c) As used in this section, "search and rescue dog" means any dog:

(1) In training for or trained for the purpose of search and rescue;

(2) Owned by an independent handler or a member of a search and rescue team; and

(3) Used in conjunction with local law enforcement or emergency services organizations for the purpose of locating missing persons or evidence of arson.

(d) Any person who without just cause purposely kills or injures any service animal described in this section or any search and rescue dog is guilty of a Class D felony.

(e) Any person who kills or injures any service animal described in this section or any search and rescue dog shall make restitution to the owner of the animal.

History. Acts 1973, No. 484, § 3; 1979, No. 574, § 1; A.S.A. 1947, § 82-2903; Acts 1995, No. 266, § 1; 1999, No. 571, § 2.

20-14-305. Access to housing accommodations.

(a) Visually handicapped, hearing impaired, and other physically handicapped persons shall be entitled to full and equal access, as other members of the general public, to all housing accommodations offered for rental, lease, or compensation in this state subject only to the conditions and limitations established by law and applicable alike to other persons.

(b) The provisions of this section with respect to the rights of visually handicapped, hearing impaired, and other physically handicapped persons to equal access to housing accommodations shall not be deemed to include any accommodations in a facility which is designed and used primarily as a single family residence and a portion of which is rented, leased, or furnished for compensation.

(c) Nothing in this section shall be deemed to require any person renting, leasing, or otherwise providing housing accommodations for compensation to modify his or her accommodations in any way or to provide a higher degree of care for a visually handicapped, hearing impaired, or otherwise handicapped person than for a person who is not visually handicapped, hearing impaired, or otherwise handicapped.

History. Acts 1973, No. 484, § 5; 1979, No. 574, § 1; A.S.A. 1947, § 82-2905.

20-14-306. Reasonable precautions by drivers.

The driver of a vehicle approaching a visually handicapped or hearing impaired person who is carrying a cane which is predominately white or metallic in color with or without a red tip or using a guide or hearing ear dog or the driver of a vehicle approaching an otherwise handicapped

person shall take all reasonable precautions to avoid injury to the visually handicapped, hearing impaired, or other physically handicapped pedestrian.

History. Acts 1973, No. 484, § 4; 1979, No. 574, § 1; A.S.A. 1947, § 82-2904.

20-14-307. Signs for the disabled.

(a) State agencies which require any persons, agencies, boards, commissions, businesses, or other entities to display signs for the disabled shall require those persons, agencies, boards, commissions, businesses, or other entities to display only the blue and white international symbol of access.

(b) This section shall have no retroactive effect, applying only to signs installed subsequent to this section's taking effect.

(c) This section shall apply only if installation of a required sign can be achieved without creating a negative financial impact on any persons, agencies, boards, commissions, businesses, or other entities required to display signs for the disabled.

History. Acts 2001, No. 992, § 1.

14-306 may not apply to this section which

A.C.R.C. Notes. References to "this subchapter" in §§ 20-14-301 through 20-

was enacted subsequently.

20-14-308. Guide dog and service dog access.

(a) A blind, physically handicapped, deaf or hard-of-hearing person and his or her guide, signal, or service dog or a dog trainer in the act of training a guide, signal, or service dog shall not be denied admittance to or refused access to the following because of the dog:

- (1) Any street or highway;
- (2) Any sidewalk or walkway;
- (3) Any common carrier, airplane, motor vehicle, railroad train, bus, streetcar, boat, or any other public conveyance or mode of transportation;
- (4) Any hotel, motel, or other place of lodging;
- (5) Any public building maintained by any unit or subdivision of government;
- (6) Any building to which the general public is invited;
- (7) Any educational facility or college dormitory;
- (8) Any restaurant or other place where food is offered for sale to the public; or
- (9) Any other place of public accommodation, amusement, convenience, or resort to which the general public or any classification of persons from the general public is regularly, normally, or customarily invited within the State of Arkansas.

(b) The blind, physically handicapped, deaf or hard-of-hearing person, or dog trainer in the act of training a guide, signal, or service dog shall not be required to pay any additional charges for his or her guide,

signal, or service dog but shall be liable for any damage done to the premises by the dog.

History. Acts 2003, No. 1107, § 1.
A.C.R.C. Notes. References to “this subchapter” in §§ 20-14-301 through 20-14-306 may not apply to this section, which was enacted subsequently.

RESEARCH REFERENCES

UALR L.J. Survey of Legislation, 2003 Health and Welfare, Guide Dogs, 26 Arkansas General Assembly, Public UALR L.J. 464.

SUBCHAPTER 4 — AMPUTEE DISABLED

SECTION.
20-14-401 — 20-14-404. [Repealed.]

20-14-401 — 20-14-404. [Repealed.]

Publisher’s Notes. This subchapter, concerning disabled amputees, was repealed by Acts 1999, No. 789, § 1. The subchapter was derived from the following sources:
20-14-401. Acts 1985, No. 1020, § 1; A.S.A. 1947, § 82-2919.
20-14-402. Acts 1985, No. 1020, § 2; A.S.A. 1947, § 82-2920.
20-14-403. Acts 1985, No. 1020, § 3; A.S.A. 1947, § 82-2921.
20-14-404. Acts 1985, No. 1020, § 4; A.S.A. 1947, § 82-2922.

SUBCHAPTER 5 — EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS

SECTION.
20-14-501. Legislative determination.
20-14-502. Definitions.
20-14-503. Statewide system of programs — Minimum requirements.
20-14-504. Assessment — Individualized family service plan.

SECTION.
20-14-505. Disposition of funds.
20-14-506. Procedural safeguards.
20-14-507. Nonsubstitution of funds — Other benefits not reduced.
20-14-508. State Interagency Council.

Preambles. Acts 1991, No. 393 contained a preamble which read: “Whereas, Arkansas Code Annotated § 20-14-503 establishes minimum components for the statewide system for early intervention program for infants and toddlers with handicaps and their families; and
“Whereas, efficient and timely delivery of service to such individuals requires the Department of Health and the Department of Human Services to share information relating to such individuals and their families.”
A.C.R.C. Notes. Acts 1987, No. 658, § 2, provided, in part: “(a) First Two

Years. The state shall apply, during each of the first two (2) years after July 20, 1987, to the Secretary of Education for a federal grant authorized by Public Law 99-457. These funds shall be used to assist in the planning, development, and implementation of a statewide system required by that law. In addition, the state shall provide at least the same amount of state, Title XIX, Title XX, and other funds to provide early intervention services to infants and toddlers with handicaps, as were provided in the 1986-87 fiscal year, and in addition, shall use at least ninety percent (90%) of federal grant money re-

ceived under Public Law 99-457 for services to infants and toddlers with handicaps. However, the agency designated by the Governor to administer the grant funds available pursuant to Public Law 99-457 shall have the authority to use less than ninety percent (90%) of the funds for services after seeking the advice of the Joint Interim Committee on State Agencies and Governmental Affairs, should the designated State Agency determine that federal regulations promulgated pursuant to Public Law 99-457 mandate activities other than direct services to handicapped infants and toddlers. Priority where reasonable shall be given to those currently on waiting lists and their families.

“(b) Third and Fourth Year. (1) The State shall apply in the third and fourth years after July 20, 1987, and shall include in its application under Public Law 99-457 for that year information and assurances demonstrating to the satisfaction of the secretary that:

“(1) The state has adopted a policy which incorporates all of the components of a statewide system in accordance with Public Law 99-457 or obtained a waiver from the secretary;

“(2) Funds will be used to plan, develop, and implement the statewide system required by Public Law 99-457 and at least fifty percent (50%) of infants and toddlers who are identified and eligible for early intervention services shall be served in addition to those added in (a) above during the third year,

and the remaining fifty percent (50%) shall be added during the fourth year;

“(3) The statewide system will be in effect no later than the beginning of the fourth year of the state's participation with the following required components: (i) A multidisciplinary assessment conducted on each child in the system; (ii) An individualized family service plan on each child served; and (iii) Case management services.”

Cross References. Handicapped children, special education, § 6-41-101 et seq.

Effective Dates. Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

20-14-501. Legislative determination.

(a) The General Assembly finds that there is an urgent and substantial need to:

(1) Enhance the development of infants and toddlers with handicaps and to minimize their potential for developmental delay;

(2) Reduce the educational costs to our society, including our state's schools, by minimizing the need for special education and related services after the infants and toddlers with handicaps reach school age;

(3) Minimize the likelihood of institutionalization of individuals with handicaps and to maximize the potential for their independent living in society; and

(4) Enhance the capacity of families to meet the special needs of their infants and toddlers with handicaps.

(b) It is therefore the policy of this state to:

(1) Develop and implement a statewide, comprehensive, coordinated, multidisciplinary interagency program of early intervention services for infants and toddlers with handicaps and their families;

(2) Coordinate payment for early intervention services from federal, state, local, and private sources, including public and private insurance coverage; and

(3) Provide quality early intervention services and to expand and improve existing early intervention services being provided to infants and toddlers with handicaps and their families.

History. Acts 1987, No. 658, § 1.

20-14-502. Definitions.

As used in this subchapter:

(1) "Council" means the State Interagency Coordinating Council;

(2) "Developmental delay" means a child is delayed in any one (1) or more of the following areas:

(A) Physical development;

(B) Cognitive development;

(C) Language and speech development;

(D) Psycho-social development; or

(E) Self-help skills;

(3) "Early intervention services" means developmental services which:

(A) Are provided under public supervision through licensure or for accreditation by the appropriate state agency;

(B) Are provided at no cost except when federal or state law or regulations provide for a system of payments by families, including a schedule of sliding fees;

(C) Are designed to meet a handicapped infant's or toddler's developmental needs in any one (1) or more of the following areas:

(i) Physical development;

(ii) Cognitive development;

(iii) Language and speech development;

(iv) Psycho-social development; or

(v) Self-help skills;

(D) Meet the standards of the state, including the requirements in this section;

(E) Include:

(i) Family training, counseling, and home visits;

(ii) Special habilitation and education instruction;

(iii) Speech pathology and audiology;

(iv) Occupational therapy such as fine motor skills;

(v) Physical therapy;

(vi) Psychological services;

(vii) Case management services at the service delivery level;

(viii) Medical services for diagnostic or evaluation purposes;

(ix) Early identification, screening, and assessment services; and

(x) Health services necessary to enable the infant or toddler to benefit from other early intervention services;

(F) Are provided by qualified personnel, including:

(i) Certified special educators or training technicians supervised by special educators;

(ii) Speech and language pathologists and audiologists;

(iii) Occupational therapists;

(iv) Physical therapists;

(v) Psychologists;

(vi) Social workers;

(vii) Nurses;

(viii) Nutritionists; and

(ix) Physicians; and

(G) Are provided in conformity with an individualized family service plan adopted in accordance with this subchapter; and

(4) "Infants and toddlers with handicaps" means individuals from birth through two (2) years of age, inclusive, who need early intervention services because they:

(A) Are experiencing developmental delays as measured by appropriate diagnostic instruments and procedures in one (1) or more of the following areas:

(i) Cognitive development;

(ii) Physical development;

(iii) Language and speech development;

(iv) Psycho-social development; or

(v) Self-help skills; or

(B) Have a diagnosed physical or mental condition which has a high probability of resulting in developmental delay or are at risk of having substantial delays if early intervention services are not provided.

History. Acts 1987, No. 658, § 2.

20-14-503. Statewide system of programs — Minimum requirements.

(a) A statewide system of coordinated, comprehensive, multidisciplinary, interagency programs providing appropriate early intervention services to all developmentally delayed infants and toddlers and their families shall include the minimum components under subsection (b) of this section.

(b) The statewide system required by subsection (a) of this section shall include, at a minimum:

(1) A definition of the term "developmentally delayed" that shall be used by the state in carrying out programs under this section;

(2) Timetables for ensuring appropriate early intervention services available to all developmentally delayed infants and toddlers in the state consistent with the federal timetables for the implementation of Pub. L. No. 99-457;

(3) A timely, comprehensive, multidisciplinary evaluation of the functioning of each developmentally delayed infant and toddler in the state and the needs of the families to appropriately assist in the development of the developmentally delayed infant or toddler;

(4) For each developmentally delayed infant and toddler in the state, an individualized family service plan in accordance with federal regulations under Pub. L. No. 99-457, including case management services in accordance with the service plan;

(5) A comprehensive child-find system, consistent with federal requirements, including a system for making referrals to service providers that includes timelines and provides for the participation by primary referral sources;

(6) A public awareness program focusing on early identification of infants and toddlers with developmental disabilities;

(7) A central directory which includes early intervention services, resources, and experts available in the state, and research and demonstration projects being conducted in the state;

(8) A comprehensive system of personnel development;

(9) A single line of responsibility in a lead agency designated or established by the Governor for carrying out:

(A) The general administration and supervision of programs and activities receiving assistance under Pub. L. No. 99-457, and the monitoring of programs and activities used by the state to carry out Part H of Pub. L. No. 99-457, whether or not such programs or activities receive Part H assistance, to ensure that the state complies with the requirements of Part H of Pub. L. No. 99-457;

(B) The identification and coordination of all available resources within the state from federal, state, local, and private sources;

(C) The assignment of financial responsibility to the appropriate agency;

(D) The development of procedures to ensure that services are provided to infants and toddlers with disabilities and their families in a timely manner pending the resolution of any disputes between public agencies or service providers;

(E) The resolution of intraagency and interagency disputes; and

(F) The entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services, consistent with state law, and procedures for resolving disputes that include all additional components necessary to ensure meaningful cooperation and coordination;

(10) A policy pertaining to the contracting or making of other arrangements with service providers to provide early intervention services in the state, consistent with the provisions of this section, including the contents of the application used and the conditions of the contract or other arrangements;

(11) A procedure for securing timely reimbursement of funds;

(12) Procedural safeguards with respect to programs;

(13) Policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out

this subchapter are appropriately and adequately prepared and trained, including:

(A) The establishment and maintenance of standards which are consistent with any state-approved or state-recognized certification, licensing, registration, or other comparable requirements which apply to the area in which personnel are providing early intervention services; and

(B) To the extent that the standards are not based on the highest requirements in the state applicable to a specific profession or discipline, the steps the state is taking to require the retraining or hiring of personnel who meet appropriate professional requirements in the state;

(14) A system for compiling data on the numbers of infants and toddlers with disabilities and their families in the state in need of appropriate early intervention services, which may be based on a sampling of data, the number of such infants and toddlers and their families served, the types of services provided, which may be based on a sampling of data, and other information required by the Secretary of the United States Department of Education;

(15) A process for increasing early intervention services and developing services in unserved areas by giving existing providers an opportunity to provide additional services in their service areas and by implementing a request for a proposal process for developing services in areas where there is no existing provider; and

(16)(A) An interagency agreement entered into by the Division of Health of the Department of Health and Human Services and the Department of Health and Human Services providing that the names and addresses from birth records of the infants or toddlers and their families who, based on the information ascertainable from those birth records, are eligible for early intervention services shall be made available between these agencies.

(B) The agency requesting or receiving confidential information pursuant to the interagency agreement shall take appropriate measures to protect and maintain the confidentiality of the information and shall not release or disclose the information except as necessary to accomplish the objectives of the system.

History. Acts 1987, No. 658, § 3; 1991, No. 393, § 1; 1991, No. 1017, § 2; 1993, No. 937, § 1.

A.C.R.C. Notes. Acts 1991, No. 1017, § 1, provided: "Paragraphs (a) and (b) of Section 2 of Act 658 of 1987 are hereby amended to read as follows:

"The statewide system of early intervention services shall be developed consistent with federal requirements and time-

tables for the implementation of Public Law 99-457."

U.S. Code. Public Law 99-457, referred to in this section, is known as the Education of the Handicapped Act Amendments of 1986 and is codified throughout 20 U.S.C. § 1400 et seq. Part H is the subchapter on infants and toddlers with disabilities and is codified as 20 U.S.C. §§ 1471-1485.

20-14-504. Assessment — Individualized family service plan.

(a) Each handicapped infant or toddler and the infant's or toddler's family shall receive:

(1) Multidisciplinary assessment of unique needs and the identification of services appropriate to meet these needs; and

(2) A written individualized family service plan developed by a multidisciplinary team, including the parent or guardian, as required by subsection (d) of this section.

(b) The individualized family service plan shall be evaluated one (1) time a year, and the family shall be provided a review of the plan at six-month intervals, or more often when appropriate, based on infant or toddler and family needs.

(c) The individualized family service plan shall be developed within a reasonable time after the assessment required by subdivision (a)(1) of this section is completed. With the parent's or guardian's consent, early intervention services may commence prior to the completion of the assessment.

(d) The individualized family service plan shall be in writing and contain:

(1) A statement of the infant's or toddler's present level of physical development, cognitive development, language and speech development, psycho-social development, and self-help skills, based on acceptable objective criteria;

(2) A statement of the family's strengths and needs relating to enhancing the development of the family's handicapped infant or toddler;

(3) A statement of the major outcomes expected to be achieved for the infant and toddler and the family, the criteria, procedures, and timeliness used to determine the degree to which progress toward achieving the outcomes is being made, and whether modifications or revisions of the outcomes are necessary;

(4) A statement of specific early intervention services necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering services;

(5) The projected dates for initiation of services and the anticipated duration of the services;

(6) The name of the case manager from the profession most immediately relevant to the infant's, toddler's, or family's needs who will be responsible for the implementation of the plan and coordination with the other agencies and persons; and

(7) The steps to be taken supporting the transition of the handicapped toddler to services provided to three-year-olds to five-year-olds to the extent that such services are considered appropriate.

History. Acts 1987, No. 658, § 4.

20-14-505. Disposition of funds.

(a) In addition to using funds provided under this subchapter to plan, develop, and implement the statewide system required by Pub. L. No. 99-457, the state shall use these funds:

(1) For direct services for infants and toddlers with disabilities that are not otherwise provided from other public or private sources; and

(2) To expand and improve on services for infants and toddlers with disabilities that are otherwise available.

(b) A maximum of ten percent (10%) of these funds may be used during the first year for central agency and State Interagency Council expenses.

History. Acts 1987, No. 658, § 5; 1997, No. 208, § 16.

A.C.R.C. Notes. Acts 1997, No. 208, § 1, codified as § 22-4-408, provided: "Legislative intent and purpose. The General Assembly hereby acknowledges that many of the laws relating to individuals with disabilities are antiquated, functionally outmoded, derogatory, ambiguous or

are inconsistent with more recently enacted provisions of the law. Consequently, it is the intent of the General Assembly and the purpose of this act to clarify the relevant chapters of Titles 1, 6, 9, 13, 14, 16, 17, 20, 22, 23, and 27 of the Arkansas Code Annotated of 1987."

U.S. Code. As to Public Law 99-457, see note, § 20-14-503.

20-14-506. Procedural safeguards.

The procedural safeguards shall be the same as required under Pub. L. No. 94-142 and Pub. L. No. 99-457 and shall provide the following at a minimum:

(1)(A) The timely administrative resolution of complaints by parents. Any party aggrieved by the findings and decision regarding a complaint shall have the right to bring a civil action with respect to the complaint which may be brought in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(B) In any action brought under this subdivision (1), the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and shall grant relief as the court determines is appropriate, basing its decision on the preponderance of the evidence;

(2) The right to confidentiality of personally identifiable information which shall be protected through procedures such as appropriate access lists, sign-offs, and procedures for handling records;

(3) The opportunity for parents or guardians to examine records relating to assessment, screening, eligibility determinations, and the development and implementation of the individualized family service plan;

(4) Procedures to protect the rights of the infants and toddlers with disabilities whenever the parents or guardian of the child is not known or is unavailable or whenever the child is a ward of the state. The procedures shall include the assignment of an individual who shall not

be an employee of the state agency providing services to act as a surrogate for the parents or guardian;

(5) Written prior notice to the parents or guardian of the infant or toddler with a disability whenever the state agency or service provider proposes to initiate or change or refuses to initiate or change the identification, evaluation, placement, or provision of appropriate early intervention services to the infant or toddler with a disability;

(6) Procedures designed to assure that the notice required by subdivision (5) of this section fully informs the parents or guardian in the parents' or guardian's native language unless it clearly is not feasible to do so, of all procedures available pursuant to this section; and

(7) During the pendency of any proceeding or action involving a complaint, unless the state agency and the parents or guardian otherwise agree, the child shall continue to receive the appropriate early intervention services currently being provided, or if applying for initial services, shall receive the services not in dispute.

History. Acts 1987, No. 658, § 6; 1997, No. 208, § 17.

A.C.R.C. Notes. Acts 1997, No. 208, § 1, codified as § 22-4-408, provided: "Legislative intent and purpose. The General Assembly hereby acknowledges that many of the laws relating to individuals with disabilities are antiquated, functionally outmoded, derogatory, ambiguous or are inconsistent with more recently en-

acted provisions of the law. Consequently, it is the intent of the General Assembly and the purpose of this act to clarify the relevant chapters of Titles 1, 6, 9, 13, 14, 16, 17, 20, 22, 23, and 27 of the Arkansas Code Annotated of 1987."

U.S. Code. Public Laws 94-142 and 99-457 referred to in this section are codified as 20 U.S.C. § 1400 et seq.

20-14-507. Nonsubstitution of funds — Other benefits not reduced.

(a) Funds provided under the Pub. L. No. 99-457 grant may not be used to satisfy a financial commitment for services which would have been paid for from another public or private source but for the enactment of Pub. L. No. 99-457, except that, whenever considered necessary to prevent the delay in the receipt of appropriate early intervention services by the infant or toddler or family in a timely fashion, funds provided under this subchapter may be used to pay the provider of services pending reimbursement from the agency which has ultimate responsibility for the payment.

(b) Nothing in this subchapter shall be construed to permit the state to reduce medical or other assistance available or to alter eligibility under Title V of the Social Security Act, relating to maternal and child health, or Title XIX of the Social Security Act, relating to Medicaid for infants and toddlers with disabilities, within the state.

History. Acts 1987, No. 658, § 7; 1997, No. 208, § 18.

A.C.R.C. Notes. Acts 1997, No. 208, § 1, codified as § 22-4-408, provided: "Legislative intent and purpose. The Gen-

eral Assembly hereby acknowledges that many of the laws relating to individuals with disabilities are antiquated, functionally outmoded, derogatory, ambiguous or are inconsistent with more recently en-

acted provisions of the law. Consequently, it is the intent of the General Assembly and the purpose of this act to clarify the relevant chapters of Titles 1, 6, 9, 13, 14, 16, 17, 20, 22, 23, and 27 of the Arkansas Code Annotated of 1987.”

U.S. Code. Titles V and XIX of the Social Security Act referred to in this section are codified as 42 U.S.C. § 701 et seq. and 42 U.S.C. § 1396 et seq., respectively. As to Public Law 99-457, see note, § 20-14-503.

20-14-508. State Interagency Council.

(a)(1) A State Interagency Council composed of at least fifteen (15) members with a maximum of twenty-five (25) members is established.

(2) The council members and the cochair of the council shall be appointed by the Governor. One (1) cochair shall be the parent of a child specified in subdivision (b)(1) of this section. In making appointments to the council, the Governor shall ensure that the membership reasonably represents the population of the state.

(b) The council shall be composed of the following:

(1) At least twenty percent (20%) of the membership shall include parents, including minorities, of infants and toddlers with disabilities, or a child with a disability who is twelve (12) years of age or younger, with knowledge of or experience with programs for infants and toddlers with disabilities, and at least two (2) of the members shall be a parent of a child who is six (6) years of age or under;

(2) At least twenty percent (20%) of the members shall be public or private providers of early intervention services, and providers of early intervention services include providers of general day care services in which early intervention services are provided;

(3) At least one (1) person involved in personnel preparation;

(4) The Commissioner of Education and the Director of the Department of Health and Human Services;

(5) At least one (1) member shall be from the state agency responsible for the state governance of insurance, especially in the area of health insurance; and

(6) Other members representing each of the appropriate agencies involved in the provision of or payment for early intervention services to infants and toddlers with disabilities and their families and others selected by the Governor.

(c) The council shall meet at least quarterly and in those places that it deems necessary. The meetings shall be publicly announced and, to the extent appropriate, open and accessible to the general public.

(d) The council shall:

(1) Advise and assist the lead agency designated in § 20-14-503(b)(9) in the performance of the responsibilities set out in Pub. L. No. 99-457 and in preparation of the budget required, particularly the identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility to the appropriate agency, and the promotion of the interagency agreements;

(2) Advise and assist the lead agency in the preparation of applications and amendments thereto; and

(3) Prepare and submit an annual report to the Governor and to the United States Secretary of Education on the status of early intervention programs for handicapped infants and toddlers and their families which are operated within the state.

(e) No member shall cast a vote on any matter which would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest under state law.

(f) The members shall not receive compensation for their services as members but may receive expense reimbursement in accordance with § 25-16-901 et seq.

History. Acts 1987, No. 658, § 8; 1991, No. 1017, § 3; 1993, No. 937, § 2; 1997, No. 250, §§ 185, 186; 2001, No. 1288, § 17.

A.C.R.C. Notes. Acts 1987, No. 658, § 8, provided, in part, that a State Inter-agency Coordinating Council shall be es-

tablished within three months of the enactment of this law.

Amendments. The 2001 amendment repealed (b)(3).

U.S. Code. As to Public Law 99-457, see note, § 20-14-503.

SUBCHAPTER 6 — ARCHITECTURAL BARRIERS ACCESSIBILITY

SECTION.

20-14-601 — 20-14-613. [Repealed.]

20-14-601 — 20-14-613. [Repealed.]

Publisher's Notes. This subchapter, concerning architectural barriers accessibility, was repealed by Acts 1993, No. 876, § 1. The subchapter was derived from the following sources:

20-14-601. Acts 1989, No. 691, § 1.

20-14-602. Acts 1989, No. 691, § 2.

20-14-603. Acts 1989, No. 691, § 3.

20-14-604. Acts 1989, No. 691, § 12.

20-14-605. Acts 1989, No. 691, § 4.

20-14-606. Acts 1989, No. 691, § 5.

20-14-607. Acts 1989, No. 691, § 5.

20-14-608. Acts 1989, No. 691, § 7.

20-14-609. Acts 1989, No. 691, § 8.

20-14-610. Acts 1989, No. 691, § 6.

20-14-611. Acts 1989, No. 691, § 10.

20-14-612. Acts 1989, No. 691, § 9.

20-14-613. Acts 1989, No. 691, § 11.

SUBCHAPTER 7 — HEAD INJURIES

SECTION.

20-14-701. Legislative intent.

20-14-702. Definition.

20-14-703. Central registry — Reports.

SECTION.

20-14-704. Rehabilitative services.

20-14-705. Audit.

20-14-701. Legislative intent.

It is the intent of the General Assembly to ensure that the notification of all head-injured persons be made to the Arkansas Head Injury Foundation by appropriate individuals or public and private agencies in order that all persons might obtain the appropriate total rehabilitative services rendered by existing state agencies, departments, and other organizations and individuals.

History. Acts 1989, No. 491, § 1.

20-14-702. Definition.

“Head injury” or “traumatic head injury” means any insult to the brain not of a degenerative or congenital nature, but caused by an external physical force, that may produce a diminished or altered state of consciousness which results in impairment of cognitive abilities or physical functioning. It can also result in the disturbance of behavioral or emotional functioning. These impairments may be either temporary or permanent and cause partial or total functional disability or psychosocial maladjustment.

History. Acts 1989, No. 491, § 1.

20-14-703. Central registry — Reports.

(a) The Arkansas Head Injury Foundation is a nonprofit organization devoted entirely to persons who have suffered head injuries. It is an affiliate of the National Head Injury Foundation. The foundation shall establish and maintain a central registry of head-injured disabled persons.

(b)(1) Every public and private health and social agency and attending physician shall report to the foundation within five (5) calendar days after an identification of any head-injured disabled person. However, the consent of the individual shall be obtained prior to making this report, except that every head injury resulting in permanent partial, permanent total, or total disability shall be reported to the foundation immediately upon identification.

(2) The report shall contain the name, age, residence, and type of disability of the individual and such additional information as may be deemed necessary by the foundation.

(3)(A) Within fifteen (15) days of the report and identification of a head-injured person, the foundation shall furnish the Division of Health of the Department of Health and Human Services all available information for use in any information system on injuries maintained by the division.

(B) The foundation shall not release the identity of the patient, reporting physician, or hospital. However, the identity of the patient shall be released upon written consent of the patient or parent or guardian of the patient, the identity of the reporting physician shall be released upon written consent of the reporting physician, and the identity of the hospital shall be released upon written consent of the hospital.

History. Acts 1989, No. 491, § 1.

20-14-704. Rehabilitative services.

(a) Within fifteen (15) days of the report and identification of a head-injured disabled person, the Arkansas Head Injury Foundation shall notify the disabled person or the most immediate family members

of their right to assistance from the state, the services available, and the eligibility requirements.

(b) The foundation shall refer severely disabled persons to appropriate divisions, departments, and other state agencies to ensure that maximum available rehabilitative services, if desired, are obtained by the head-injured disabled person.

(c) All other agencies of the state shall cooperate with the Governor's Commission on People with Disabilities to ensure that appropriate total rehabilitative and other services are available.

History. Acts 1989, No. 491, § 1.

20-14-705. Audit.

All of the above fines are subject to audit by the Legislative Joint Auditing Committee.

History. Acts 1989, No. 491, § 1.

did not provide for any fines, the meaning

A.C.R.C. Notes. As Acts 1989, No. 491

of this section is unclear.

CHAPTER 15

DISEASE AND DISEASE PREVENTION GENERALLY

SUBCHAPTER

1. GENERAL PROVISIONS. [RESERVED.]
2. CANCER.
3. PHENYLKETONURIA, HYPOTHYROIDISM, AND SICKLE-CELL ANEMIA.
4. REYE'S SYNDROME.
5. SUDDEN INFANT DEATH SYNDROME ACT.
6. RENAL DISEASES.
7. TUBERCULOSIS.
8. SCOLIOSIS.
9. HUMAN IMMUNODEFICIENCY VIRUS OR ACQUIRED IMMUNODEFICIENCY SYNDROME.
10. BREAST CANCER — MAMMOGRAMS.
11. NEWBORN INFANT HEARING SCREENING PROGRAM.
12. IMMUNIZATION REGISTRATION.
13. BREAST CANCER ACT OF 1997.
14. OSTEOPOROSIS PREVENTION EDUCATION ACT OF 1997.
15. UNIVERSAL NEWBORN HEARING SCREENING, TRACKING, AND INTERVENTION PROGRAM AND ADVISORY BOARD.
16. PROSTATE CANCER ACT OF 1999.
17. COLORECTAL CANCER ACT OF 2005.

A.C.R.C. Notes. Acts 2003, No. 755, §§ 1-5, as amended by Acts 2005, No. 1438, §§ 2 and 4, provided: "SECTION 1. Intent.

"(a) The General Assembly recognizes:

"(1) The importance of adequate eye and vision care for school age children as an important component to maximizing their

educational opportunities and classroom performance; and

"(2) The need for a study to be conducted to evaluate eye and vision care in school age children and to develop a strategic statewide plan regarding the needs and solutions of eye and vision problems of school age children.

"(b) Therefore, the purposes of this act are to create a commission to conduct such a study and to make findings and recommendations to the General Assembly and the Governor.

"SECTION 2. Arkansas Commission on Eye and Vision Care of School Age Children.

"(a)(1) There is established the Arkansas Commission on Eye and Vision Care of School Age Children to be composed of seventeen (17) members.

"(2) The following members shall be appointed by the Governor:

"(A) Four (4) optometrists;

"(B) Two (2) ophthalmologists;

"(C) One (1) pediatrician;

"(D) One (1) school nurse who is currently working in a public elementary school in this state;

"(E) One (1) person currently working as a principal in a public elementary school in this state; and

"(F) One (1) person currently working as a classroom teacher in a public elementary school in this state.

"(3) The following members shall be appointed by the Speaker of the House of Representatives:

"(A) One (1) family practice physician; and

"(B) One (1) principal of a public elementary school.

"(4) The following members shall be appointed by the President Pro Tempore of the Senate:

"(A) One (1) family practice physician; and

"(B) One (1) teacher in a public elementary school.

"(5) The chairperson of the House Committee on Public Health, Welfare, and Labor shall appoint one (1) member who has a child in a public school in this state.

"(6) The chairperson of the Senate Committee on Public Health, Welfare, and Labor shall appoint one (1) member who has a child in a public school in this state.

"(7) The optometrist serving on the State Board of Health shall also be a member of the board and shall serve as a liaison to the Department of Health.

"(b)(1) The Governor shall designate one (1) of the optometrist appointees to serve as chairperson of the commission.

"(2) The members of the commission shall select from their membership, a vice chairperson, a secretary, and a treasurer.

"(c) The first meeting shall be held within thirty (30) days of the appointment of the members by the Governor, and shall be called by the chairperson.

"(d)(1) A majority of the membership of the commission shall constitute a quorum.

"(2) A majority vote of those members present shall be required for any action of the commission.

"(e) Vacancies shall be filled for the unexpired portion of the term in the same manner as is provided in this section for initial appointments.

"(f) To the extent that moneys are made available for that purpose, the members of the commission may receive expense reimbursement in accordance with Arkansas Code § 25-16-902.

"SECTION 3. Duties.

"(a) The Arkansas Commission on Eye and Vision Care of School Age Children shall:

"(1) Study the eye and vision needs of the school age children of Arkansas;

"(2) Study and evaluate vision screening programs in the schools, and their effectiveness;

"(3) Study and evaluate whether children are receiving adequate eye and vision care, and correction of vision problems;

"(4) Study the effects of inadequate vision on the performance of children in the classroom; and

"(5) Continue to develop a strategic statewide plan to ensure adequate eye and vision care of school age children.

"(b) The commission shall report its findings and updates to the Governor, the Legislative Council, and the House and Senate Interim Committees on Public Health, Welfare, and Labor two (2) times per year.

"(c) The commission may accept any and all donations, grants of money, instruments, equipment, supplies, materials, and services, conditional or otherwise from private sources, from municipal and county governments, from the state, and from the federal government. The commission may use any of its resources to further the commission's purposes and functions.

"(d) The commission shall develop criteria for the distribution of commission resources to individuals and school districts in need of financial or other assistance necessary to satisfy the requirements of

Arkansas Code §§ 6-18-1301 through 6-18-1306.

“(e) In conjunction with the Department of Education, the commission shall develop criteria for passage or failure of a vision screening and criteria for referral for a comprehensive eye examination. The Department of Education shall adopt the criteria as rules promulgated under the Administrative Procedure Act, § 25-15-201 et seq.

“(f) In conjunction with the Department of Education, the commission shall develop standardized forms to be used with regard to conducting and reporting the results of eye and vision screenings.

“(g) The commission and the Department of Education shall evaluate and approve the vision screening instruments, equipment, and other testing items that are used to conduct the eye and vision screenings.

“(h) The commission shall conduct a pilot study to evaluate the pre- and post-performance test scores of school children

who have been screened and referred for vision problems. The study shall encompass rural, urban, and empowerment zone school systems.

“SECTION 4. Funding.

“(a)(1) The commission’s funding shall be from grants, donations, and any other funds that may be made available through appropriations by the General Assembly.

“(2) Moneys received by the commission shall be used solely for the support of the functions of the commission.

“(b)(1) Grants and donations received by the commission shall be cash funds and shall be administered by the Arkansas Department of Health but shall be subject to appropriation by the General Assembly.

“(2) Any moneys received from grantors and donors that are not expended by the commission shall be returned to the grantors and donors in proportion that each bears to the total of all grants and donations received by the commission.

“SECTION 5. The commission shall expire on June 30, 2007.”

RESEARCH REFERENCES

Am. Jur. 39 Am. Jur. 2d, Health, § 22 et seq.

C.J.S. 39A C.J.S., Health & E., § 18 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

SUBCHAPTER 2 — CANCER

SECTION.

- 20-15-201. Reporting requirements.
- 20-15-202. State cancer plan.
- 20-15-203. Confidentiality.

SECTION.

- 20-15-204. Agreements with other states.
- 20-15-205. Gifts, grants, and donations.
- 20-15-206. [Repealed.]

Publisher’s Notes. The State Cancer Commission and its powers, duties, and functions were transferred by a Type 3 transfer to the Department of Health by Acts 1971, No. 38, § 11. See § 25-2-106.

Former subchapter 2, concerning cancer, was repealed by Acts 1989, No. 435, § 1. The former subchapter was derived from the following sources:

20-15-201. Acts 1945, No. 277, § 3; A.S.A. 1947, § 82-603.

20-15-202. Acts 1945, No. 277, § 5; A.S.A. 1947, § 82-605.

20-15-203. Acts 1945, No. 277, § 4; A.S.A. 1947, § 82-604.

20-15-204. Acts 1945, No. 277, § 6; A.S.A. 1947, § 82-606.

20-15-205. Acts 1969, No. 222, § 1; A.S.A. 1947, § 82-604.1.

20-15-206. Acts 1985, No. 454, §§ 1-3; A.S.A. 1947, §§ 82-604.2 — 82-604.4.

20-15-201. Reporting requirements.

The Division of Health of the Department of Health and Human Services shall accumulate such data concerning cancer in Arkansas and its residents as is deemed appropriate for the purposes of describing the frequency of cancer, furnishing reports to health professionals and the public, and for planning and evaluating cancer prevention and control programs. The data shall be collected under the authority of regulations promulgated by the State Board of Health.

History. Acts 1989, No. 435, § 2.

20-15-202. State cancer plan.

A task force consisting of public and private entities shall be established by the Director of the Division of Health of the Department of Health and Human Services to assist the Division of Health of the Department of Health and Human Services in developing a strategic plan for a coordinated, comprehensive, statewide network of cancer resources, services, and programs.

History. Acts 1989, No. 435, § 2.

20-15-203. Confidentiality.

Information accumulated and maintained in the Cancer Registry of Arkansas shall not be divulged except as statistical information which does not identify individuals and for purposes of such research as approved by the State Board of Health.

History. Acts 1989, No. 435, § 2.

20-15-204. Agreements with other states.

(a) The Division of Health of the Department of Health and Human Services may enter into agreements with other states and federal organizations authorized to exchange registry data.

(b) The agreements shall prohibit divulging information to entities without prior approval of the division.

History. Acts 1989, No. 435, § 2.

20-15-205. Gifts, grants, and donations.

The Division of Health of the Department of Health and Human Services may receive gifts, grants, and donations for the purposes of this subchapter.

History. Acts 1989, No. 435, § 2.

20-15-206. [Repealed.]

Publisher's Notes. As to repeal of this section, see note at beginning of subchapter.

SUBCHAPTER 3 — PHENYLKETONURIA, HYPOTHYROIDISM, AND SICKLE-CELL ANEMIA

SECTION.

20-15-301. Injunction.

20-15-302. Testing of newborns.

20-15-303. Exception.

20-15-304. Administration by Division of

Health of the Department
of Health and Human Ser-
vices.

Cross References. Handicapped children, educational programs, § 6-41-101 et seq.

Effective Dates. Acts 1967, No. 192, § 7: Mar. 6, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that Phenylketonuria is a condition which causes mental illness unless detected and corrective procedures are taken early in the life of a newborn infant, and that the immediate passage of this Act is necessary to authorize the State Board of Health to adopt necessary rules and regulations to require testing of all newborn infants in this State for Phenylketonuria. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 481, § 5: Mar. 13, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that phenylketonuria and hypothyroidism are conditions which cause irreversible damage unless detected and corrective procedures are taken early in the life of a newborn infant, and that the immediate passage of this Act is necessary to authorize the State Department of Health to adopt necessary rules and regulations to require testing of all newborn infants in this State for phenylketonuria and hypothyroidism. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Ark. L. Rev. Leflar, Liberty and Death: Advance Health Care Directives and the Law of Arkansas, 39 Ark. L. Rev. 375.

20-15-301. Injunction.

The State Board of Health shall have the power to enforce this subchapter by appropriate action for injunction in the circuit courts of this state.

History. Acts 1967, No. 192, § 4; A.S.A. 1947, § 82-628.

20-15-302. Testing of newborns.

(a)(1)(A) All newborn infants shall be tested for phenylketonuria, hypothyroidism, galactosemia, cystic fibrosis, and sickle-cell anemia.

(B) In addition, if reliable and efficient testing techniques are available, all newborn infants shall be tested for other genetic disorders of metabolism by employing procedures approved by the State Board of Health.

(2)(A) Medicaid shall reimburse the hospital that performs the tests required under subdivision (a)(1) of this section for the cost of the tests.

(B) The reimbursement shall be in addition to the hospital's per diem payments for the newborn infant.

(b) All positive test results shall be sent immediately to the Division of Health of the Department of Health and Human Services.

(c)(1) The division shall establish and maintain a program of reviewing and following up on positive cases so that measures may be taken to prevent mental retardation or other permanent disabilities.

(2)(A) Information on newborn infants and their families compiled under this section may be used by the division and persons or public or private entities designated by the division.

(B) Information used under subdivision (c)(2)(A) of this section may not refer to or disclose the identity of any person.

(3) All materials, data, and information received by the division are confidential and are not subject to examination or disclosure as public information under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(d)(1) The division shall conduct an intensive educational and training program among physicians, hospitals, public health nurses, and the public concerning the disorders covered under this section.

(2) The program shall include information concerning:

(A) The nature of the disorders;

(B) Testing for the detection of these disorders; and

(C) Treatment modalities for these disorders.

(e) The provisions of this section shall not apply if the parents or legal guardian of a newborn infant object to the testing on medical, religious, or philosophical grounds.

(f) Testing for cystic fibrosis under this section shall be implemented only if funding is available.

History. Acts 1967, No. 192, § 1; 1981, No. 481, § 1; A.S.A. 1947, § 82-625; Acts 1987, No. 573, § 1; 1995, No. 113, § 1; 2003, No. 1293, § 1; 2005, No. 1931, § 1.

Amendments. The 2003 amendment rewrote (a).

The 2005 amendment inserted "cystic fibrosis" in (a)(1)(A); inserted "if reliable and efficient testing techniques are available" in (a)(1)(B); and added (c)-(f).

20-15-303. Exception.

This subchapter shall not apply to any child whose parents or guardian objects thereto on the grounds that it conflicts with the tenets and practices of a recognized church or religious faith of which the parent or guardian is an adherent or member.

History. Acts 1967, No. 192, § 3;
A.S.A. 1947, § 82-627.

20-15-304. Administration by Division of Health of the Department of Health and Human Services.

It shall be the duty of the Division of Health of the Department of Health and Human Services to:

- (1) Enforce this subchapter;
- (2) Prescribe the tests that may be administered in compliance with this subchapter;
- (3) Promulgate regulations in conjunction with the Insurance Commissioner establishing:
 - (A) What persons and institutions shall be required to obtain specimens from newborn infants in compliance with this subchapter;
 - (B) The amount to be charged by the central laboratory for processing the specimens; and
 - (C) The method of billing the charges to the persons and institutions;
- (4) Furnish copies of this subchapter and the rules promulgated pursuant to this subchapter to physicians, hospitals, or other institutions or persons required by its regulations to have tests administered to newborn infants;
- (5) Establish a central laboratory and to equip, staff, and operate the laboratory for the purpose of receiving specimens from physicians, hospitals, and institutions, to assure that tests are conducted, and to report findings resulting from the tests;
- (6) Monitor positive test results and to assist in treatment and care of affected infants, such follow-up procedures to begin no later than ten (10) days from the time a specimen is diagnosed as positive; and
- (7) Disseminate information and advice to the public concerning the dangers and effects of phenylketonuria, hypothyroidism, galactosemia, sickle-cell anemia, and all other disorders of metabolism for which screening is performed by or for the State of Arkansas.

History. Acts 1967, No. 192, § 2; 1981, No. 481, § 2; A.S.A. 1947, § 82-626; Acts 1987, No. 573, § 2; 2003, No. 1293, § 2.

Amendments. The 2003 amendment substituted "to assure that tests are con-

ducted and to report" for "and to conduct tests and report" in (5); and substituted "galactosemia...State of Arkansas" for "and sickle-cell anemia" in (7).

SUBCHAPTER 4 — REYE’S SYNDROME

SECTION.
20-15-401. Duty of physician to report.

20-15-401. Duty of physician to report.

- (a) Every physician practicing medicine in the State of Arkansas shall report to the Division of Health of the Department of Health and Human Services any case or suspected case of Reye’s syndrome disease which he or she is attending, or has examined, or for which the physician has prescribed.
- (b) The report shall be made as promptly as possible from the time the physician first visits, examines, or prescribes for the patient, and the report shall state the name, age, sex, race, usual residence, place where the patient is to be found, the nature of the disease, the date of onset, and any additional information that the Director of the Division of Health of the Department of Health and Human Services may require.
- (c) The division shall send a copy of the report to the federal Centers for Disease Control and Prevention together with additional information relating thereto as may be required by the national center.

History. Acts 1981, No. 842, § 1;
A.S.A. 1947, § 82-643.

SUBCHAPTER 5 — SUDDEN INFANT DEATH SYNDROME ACT

SECTION.
20-15-501. Title.
20-15-502. Reports required.

SECTION.
20-15-503. Autopsy.
20-15-504. Limitation on autopsies.

Publisher’s Notes. Acts 1983, No. 718, § 28 provided that the Director of the Department of Health shall allocate sufficient appropriation and funding to comply with the provisions of this subchapter as long as any federal funds are made avail-

able by the United States government to the State of Arkansas which can be used for transporting and performing autopsies on suspected victims of sudden infant death syndrome.

20-15-501. Title.

This subchapter shall be known and may be cited as the “Sudden Infant Death Syndrome Act”.

History. Acts 1979, No. 116, § 1;
A.S.A. 1947, § 82-639.

20-15-502. Reports required.

(a) Any sheriff, deputy sheriff, city police officer, state police officer, member of the staff of any public or private hospital, or attending physician with knowledge of the sudden death of a child between the ages of one (1) week and one (1) year who appeared in apparent good health shall immediately report the death to the county coroner or the county sheriff if the county coroner is unavailable, within twenty-four (24) hours after the discovery of the death.

(b) The report shall include facts concerning the time, place, manner, and circumstances surrounding the death.

(c) Upon receipt of the report, the county coroner, or the county sheriff if the county coroner is unavailable, shall report the death to the Division of Health of the Department of Health and Human Services.

History. Acts 1979, No. 116, § 2;
A.S.A. 1947, § 82-640.

20-15-503. Autopsy.

(a) Upon receipt of the report, the county coroner, or the county sheriff if the county coroner is unavailable, shall request from the parents or guardian of the deceased written permission upon a form provided by the Division of Health of the Department of Health and Human Services for an autopsy to be made to determine the exact cause of death.

(b)(1) Upon receipt of the permission, the county coroner, or the county sheriff if the county coroner is unavailable, shall notify the division. The division shall arrange for the transportation of the deceased and arrange for an autopsy to be made by a licensed physician in the State of Arkansas and shall arrange for the return transportation of the deceased.

(2) If the parents or guardian shall refuse permission for an autopsy to be made, the death nevertheless shall be reported to the division.

(c)(1) The results and findings of the autopsy, if any is performed, shall be reported to the parents or guardian of the deceased.

(2) The appropriate finding of cause of death shall be recorded upon the certificate of death in any case and the term "sudden infant death syndrome" shall be entered on the certificate of death when it is appropriately descriptive of the circumstances and cause of death of the child.

(d) Information concerning sudden infant death syndrome shall be provided by the division to the parents or guardian of an infant whose death has been reported pursuant to this subchapter.

History. Acts 1979, No. 116, § 3;
A.S.A. 1947, § 82-641.

20-15-504. Limitation on autopsies.

The Division of Health of the Department of Health and Human Services shall provide for the transportation and the autopsy as provided in § 20-15-503 only so long as federal funds are available to the division for the transportation and autopsies of suspected victims of sudden infant death syndrome.

History. Acts 1979, No. 116, § 4; A.S.A. 1947, § 82-642.

SUBCHAPTER 6 — RENAL DISEASES

SECTION.

- 20-15-601. Legislative findings and purpose.
- 20-15-602. State Kidney Disease Commission — Creation — Members.
- 20-15-603. State Kidney Disease Commission — Powers and duties.

SECTION.

- 20-15-604. State Kidney Disease Commission — Advisory association.
- 20-15-605. State Kidney Disease Commission — Disbursement of funds.

Effective Dates. Acts 1971, No. 450, § 9: Mar. 30, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that a number of citizens of this State are suffering from chronic renal disease and face death unless immediate steps are taken to provide a system of financial assistance to enable such persons to obtain care and treatment of such chronic renal disease; and that the immediate passage of this Act is necessary in order to establish a state program of providing assistance for the care and treatment of such individuals which is essential to saving their lives and permitting them to live as productive citizens; and the General Assembly further determines that additional delay in the implementation of this program will result in the unnecessary loss of lives that could be saved through a program of financial assistance provided by this Act. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 131, § 6, and No. 135, § 6: Feb. 10, 1983. Emergency clauses provided: "It is hereby found and determined by the General Assembly that state

boards and commissions exist for the singular purpose of protecting the public health and welfare; that citizens over 60 years of age represent a significant percentage of the population; that it is necessary and proper that the older population be represented on such boards and commissions; that the operations of the boards and commissions have a profound effect on the daily lives of older Arkansas; and that the public voice of older citizens should not be muted as to questions coming before such bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 1050, § 13: July 1, 1987. Emergency clause provided: "It is hereby found and determined by the Seventy-Sixth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1987 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1987 could work irreparable harm upon

the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1987."

Acts 1989 (1st Ex. Sess.), No. 202, § 13: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1989 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1989 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in

full force and effect from and after July 1, 1989."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

20-15-601. Legislative findings and purpose.

(a)(1) It is declared and found that one (1) of the major problems facing medicine and the public health and welfare is the lack of an adequate program to assist in the treatment and cure of persons suffering from chronic kidney disease.

(2) It is estimated that a number of citizens of this state annually are confronted with chronic kidney disease requiring complicated and expensive treatment which is often beyond the financial resources of the individuals.

(3) There is a critical shortage of adequate facilities within the state for the discovery, evaluation, diagnosis, treatment, and cure of individuals suffering from chronic kidney disease.

(b) In order to provide for the care and treatment of persons suffering from acute or chronic kidney disease and in order to encourage and assist in the development of adequate treatment facilities for persons suffering from acute or chronic kidney disease, it is essential that the state develop a program of financial assistance to aid in defraying a portion of the cost for the care and treatment of chronic renal disease to the extent that the individual suffering from the disease is unable to pay for the services on a continuing basis.

History. Acts 1971, No. 450, § 1;
A.S.A. 1947, § 82-2501.

20-15-602. State Kidney Disease Commission — Creation — Members.

(a)(1) There is established a State Kidney Disease Commission to consist of ten (10) members.

(2) Nine (9) members shall be appointed by the Governor and confirmed by the Senate as follows:

(A) Three (3) members who are knowledgeable in renal medicine and the treatment of end-stage renal disease shall be physicians licensed to practice in Arkansas who are actively engaged in the private practice of medicine in this state;

(B) One (1) member who is knowledgeable in renal medicine and the treatment of end-stage renal disease shall be a physician licensed in Arkansas who is engaged primarily in the institutional practice of medicine;

(C) Two (2) members shall be persons engaged in hospital administrative activities;

(D) Two (2) members shall be named from the public at large, but they shall be individuals who have a demonstrated interest in the treatment and cure of renal diseases; and

(E) One (1) member who shall represent the elderly shall be sixty (60) years of age or older and shall be appointed from the state at large. The member shall not be actively engaged in or retired from any profession, occupation, or industry which is regulated pursuant to this subchapter.

(3) The Deputy Director of the Division of Rehabilitation Services of the Department of Health and Human Services shall be a member of the commission and shall serve as secretary and disbursing officer of funds appropriated to the commission for the treatment and cure of renal diseases.

(b) Members shall be appointed for four-year terms to expire on January 14 of the members' fourth year of the appointed term. Members shall serve until their successors are appointed and qualified.

(c) If a vacancy occurs on the commission due to death, resignation, or other cause, the vacancy shall be filled by appointment of the Governor of a person eligible for the initial appointment, as provided in subsection (a) of this section, for the remainder of the unexpired portion of the term of the member.

(d) The commission shall annually elect one (1) of its members as chair and one (1) of its members as vice chair and such other officers as the commission deems necessary.

(e) The commission shall meet at least one (1) time each calendar quarter and at such other times as may be designated by the commission's rules or upon call by the chair or upon written request of any four (4) members.

(f) Members shall serve without pay but may receive expense reimbursement in accordance with § 25-16-901 et seq.

(g) Members shall qualify by taking the oath of office as prescribed by law.

History. Acts 1971, No. 450, §§ 2, 3; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; A.S.A. 1947, §§ 6-623 — 6-626, 82-2502, 82-2503; Acts 1991, No. 848, § 1; 1997, No. 250, § 187.

Publisher's Notes. The terms of the members of the State Kidney Disease Commission, other than the term of the elderly member, are arranged so that the term of one of each of the two members

named to represent each of the groups designated in subdivisions (a)(1)(A)-(D) expires every two years.

Acts 1991, No. 848, § 1, provided, in part, that the two members of the State Kidney Disease Commission holding appointments under subdivision (a)(1)(B) on February 1, 1989, shall serve until their terms expire.

20-15-603. State Kidney Disease Commission — Powers and duties.

(a) The State Kidney Disease Commission shall have the following functions, powers, and duties:

(1) To establish a program to assist persons suffering from acute or chronic renal failure in obtaining care and treatment requiring dialysis. The program shall provide financial assistance for persons suffering from chronic renal diseases who require life-saving care and treatment for the renal disease to the extent as determined by the commission that a person is unable to pay for the services on a continuing basis without causing unjust and unusual hardship to himself or herself and his or her immediate family including, but not limited to, a drastic lowering of the standard of living;

(2) To develop standards for determining eligibility for assistance in defraying the cost of care and treatment of renal disease under this program;

(3) To cooperate with hospitals, private groups, and organizations and public agencies in the development of positive programs to bring about financial assistance and support of evaluation and treatment of patients suffering from chronic kidney disease;

(4) To cooperate with the national and state kidney foundations and with medical programs of the state and federal government for the purpose of obtaining the maximum amount of federal and private assistance possible in support of a kidney disease treatment program;

(5) To establish criteria and standards for evaluating the financial ability of persons suffering from chronic renal disease to pay for their own care, including the availability of third-party insurance coverage, for the purpose of establishing standards for eligibility for financial assistance in defraying the cost of the care and treatment from funds appropriated to the commission for renal disease treatment purposes; and

(6) To accept gifts, grants, and donations from private sources, municipal and county governments, and the federal government, to be used for the purposes of this subchapter in defraying costs incurred by persons suffering from acute or chronic renal disease who are unable to meet the total cost of life-saving care and treatment for renal disease.

(b) Whereas the current Department of Finance and Administration accounting system will accept current-year refunds, credit the current-year appropriation, and allow expenditure of the funds, the commission, administered by the Arkansas Rehabilitation Services, may accept prior-year refunds and contributions and deposit the funds in the agency cash fund in an account specifically identified as the State Kidney Disease Escrow Account and disbursed for the purchase of additional services for clients served by the commission.

History. Acts 1971, No. 450, § 4; A.S.A. 1947, § 82-2504; Acts 1987, No. 1050, § 9; 1989 (1st Ex. Sess.), No. 202, § 8.
A.C.R.C. Notes. Former subsection (b) is deemed to be superseded by the current subsection enacted in 1989.

20-15-604. State Kidney Disease Commission — Advisory association.

(a) In developing rules and regulations and in determining standards for determining eligibility for financial assistance to persons suffering from chronic renal diseases who require lifesaving care and treatment for such renal diseases, the State Kidney Disease Commission shall consult with and obtain the advice of the Arkansas Association for Kidney Disease, Inc., a nonprofit corporation organized under the laws of this state. This organization is recognized as the representative body to serve as an advisory association to the commission and to the deputy director of the appropriate division as determined by the Director of the Department of Health and Human Services in carrying out their functions and duties under this subchapter.

(b) Before promulgating rules and regulations and eligibility standards, the commission shall consult with the advisory association and shall give consideration to its recommendations in performing its duties under the provisions of this subchapter.

History. Acts 1971, No. 450, § 5; A.S.A. 1947, § 82-2505.

20-15-605. State Kidney Disease Commission — Disbursement of funds.

(a) The Deputy Director of the Arkansas Rehabilitation Services of the Department of Workforce Education shall be the disbursing officer of funds appropriated by the General Assembly and of other funds made available to the State Kidney Disease Commission for such purposes. These funds are to provide monetary assistance to defray the cost incurred by patients suffering from acute or chronic renal disease who are unable to meet the total cost of their care or treatment from their own resources or from third-party resources.

(b) The deputy director shall be governed by the policies, rules and regulations, and procedures promulgated by the commission in disbursing funds appropriated, or otherwise made available, to the commission for renal disease treatment purposes.

History. Acts 1971, No. 450, § 6; A.S.A. 1947, § 82-2506; Acts 1991, No. 848, § 2. **Cross References.** Prior-year re-funds, § 20-15-603(b).

SUBCHAPTER 7 — TUBERCULOSIS

SECTION.	SECTION.
20-15-701. Definition.	20-15-707. Commitment.
20-15-702. Penalty.	20-15-708. Observation of rules and reg- ulations required.
20-15-703. Involuntary examinations.	20-15-709. Discharge.
20-15-704. Petition to isolate patient.	20-15-710. Violations of commitment — Penalties.
20-15-705. Notice of petition and hearing.	
20-15-706. Hearing.	

Cross References. Arkansas Tubercu-
losis Sanatorium, § 20-11-101 et seq.
Effective Dates. Acts 1957, No. 298,
§ 2: approved Mar. 27, 1957. Emergency
clause provided: “It is hereby determined
as a matter of fact that the failure to
authorize the City Health Officer to func-
tion in accomplishing the purposes sought
under Act 161 of 1955 has resulted in an
impairment of the public peace, health
and safety and an emergency is declared
to exist, and this act shall take effect from
and after its passage.”

CASE NOTES

ANALYSIS	
Construction.	peals are tested and Supreme Court will examine the evidence to ascertain if the findings of the probate judge are against the preponderance of the evidence. State v. Snow, 230 Ark. 746, 324 S.W.2d 532 (1959).
Appeal.	
Parens patriae.	
Construction.	Parens Patriae.
Although this subchapter is not a penal statute, it is to be strictly construed to protect the rights of the citizen. State v. Snow, 230 Ark. 746, 324 S.W.2d 532 (1959).	A proceeding under this subchapter is neither a civil nor a criminal proceeding but a special proceeding by the state in its character of parens patriae based on the theory that the public has an interest to be protected. State v. Snow, 230 Ark. 746, 324 S.W.2d 532 (1959).
Appeal.	
Appeals under this subchapter are tested in the same way as chancery ap-	

20-15-701. Definition.

As used in this subchapter, “active tuberculosis” means that the disease is in a communicable or infectious stage as established by chest X ray, microscopical examination of sputum, or other diagnostic proce-
dures approved jointly by the Director of the Division of Health of the
Department of Health and Human Services and the medical director of
either the Arkansas Tuberculosis Sanatorium or the Arkansas State
Hospital.

History. Acts 1955, No. 161, § 1;
A.S.A. 1947, § 82-611.

20-15-702. Penalty.

Any person who violates any of the provisions of this subchapter shall be guilty of a violation and upon conviction shall pay a fine of not less than twenty-five dollars (\$25.00) and not more than one hundred dollars (\$100).

History. Acts 1955, No. 161, § 14; A.S.A. 1947, § 82-624; Acts 2005, No. 1994, § 189.

Amendments. The 2005 amendment substituted "violation" for "misdemeanor" and made a minor stylistic change.

CASE NOTES

Cited: State v. Snow, 230 Ark. 746, 324 S.W.2d 532 (1959).

20-15-703. Involuntary examinations.

(a) When the state, county, or city health officer shall have reasonable grounds to believe that any person has tuberculosis in an active state or in a communicable form and who will not voluntarily seek a medical examination or treatment, the health officer may cause the person to be apprehended and detained for the necessary tests and examinations, including an approved chest X ray, sputum examination, and other approved laboratory tests to ascertain the existence of tuberculosis.

(b) If active tuberculosis is found to exist, it shall then be the duty of the health officer to make an investigation of the person to determine whether the environmental conditions of the person or the conduct of the person is suitable for proper isolation or control of the case by any type of local quarantine.

History. Acts 1955, No. 161, § 2; 1957, No. 298, § 1; 1961, No. 171, § 1; A.S.A. 1947, § 82-612.

CASE NOTES

Cited: Powell v. Woolfolk, 233 Ark. 893, 349 S.W.2d 657 (1961).

20-15-704. Petition to isolate patient.

(a) If the health officer finds that the circumstances are not suitable for proper isolation or contagious control of the case by any type of local quarantine and if the person will not voluntarily seek medical treatment and is a source of danger to others, then the health officer shall petition the circuit court of the county where the person is found to order the admission of the person to any state-owned and state-operated hospital or sanatorium or any other hospital or sanatorium that is equipped to treat tuberculosis under the conditions enumerated in § 20-15-707(a).

(b) The health officer shall set forth in a petition a summary of the factual basis of the determination that the circumstances are not suitable for proper isolation or contagious control of the case by any type of local quarantine and that the person will not voluntarily seek medical treatment and is a source of danger to others.

History. Acts 1955, No. 161, §§ 3, 4; 1975, No. 745, § 1; A.S.A. 1947, §§ 82-613, 82-614.

CASE NOTES

Cited: *Powell v. Woolfolk*, 233 Ark. 893, 349 S.W.2d 657 (1961).

20-15-705. Notice of petition and hearing.

(a) Upon receiving the petition, the court shall fix a date for a hearing on the petition and shall cause notice of the petition, with the time and place for the hearing, to be served personally at least seven (7) days before the hearing upon the person who has tuberculosis and is alleged to be dangerous to others.

(b) While the petition is pending, the person shall be subject to the local quarantine or restrictions of his or her movements placed on him or her by the health officer for the protection of the public health.

History. Acts 1955, No. 161, § 5; A.S.A. 1947, § 82-615; Acts 1997, No. 208, § 19.

A.C.R.C. Notes. Acts 1997, No. 208, § 1, codified as § 22-4-408, provided: "Legislative intent and purpose. The General Assembly hereby acknowledges that many of the laws relating to individuals with disabilities are antiquated, function-

ally outmoded, derogatory, ambiguous or are inconsistent with more recently enacted provisions of the law. Consequently, it is the intent of the General Assembly and the purpose of this act to clarify the relevant chapters of Titles 1, 6, 9, 13, 14, 16, 17, 20, 22, 23, and 27 of the Arkansas Code Annotated of 1987."

CASE NOTES

Cited: *State v. Snow*, 230 Ark. 746, 324 S.W.2d 532 (1959).

20-15-706. Hearing.

The petition shall be heard in open court, and the respondent to the petition shall have the privilege of counsel of his or her own selection.

History. Acts 1955, No. 161, § 6; A.S.A. 1947, § 82-616.

CASE NOTES

Cited: *State v. Snow*, 230 Ark. 746, 324 S.W.2d 532 (1959).

20-15-707. Commitment.

(a) If upon hearing of the petition the court finds that the circumstances are not suitable for proper isolation or contagious control of the case by any type of local quarantine and that the person will not voluntarily seek medical treatment and is a source of danger to others, the court shall order the commitment of the person to a hospital or sanatorium as petitioned for.

(b) The superintendent of the institution to which the person is committed shall direct that the person be placed apart from others and restrained from leaving the institution.

History. Acts 1955, No. 161, §§ 7, 8; A.S.A. 1947, §§ 82-617, 82-618.

CASE NOTES**Evidence.**

Evidence sufficient to show lower court properly refused to commit defendant, but action was not res judicata and case would be remanded for further proceedings.

State v. Snow, 230 Ark. 746, 324 S.W.2d 532 (1959).

Cited: State v. Snow, 230 Ark. 746, 324 S.W.2d 532 (1959); Powell v. Woolfolk, 233 Ark. 893, 349 S.W.2d 657 (1961).

20-15-708. Observation of rules and regulations required.

(a) A person who is committed to the hospital or sanatorium under the provisions of this subchapter shall observe all the rules and regulations of the hospital or sanatorium.

(b) The superintendent of the institution may file a complaint in the district court against a person committed to the institution under the provisions of this subchapter who willfully violates the rules and regulations of the institution or who conducts himself or herself in a disorderly manner. A person so charged shall have the legal procedural rights of a person charged with disorderly conduct.

History. Acts 1955, No. 161, §§ 9, 10; A.S.A. 1947, §§ 82-619, 82-620; Acts 2003, No. 1185, § 255.

Amendments. The 2003 amendment,

in (b), substituted "district court" for "municipal or justice of peace court" and inserted "or herself."

CASE NOTES

Cited: State v. Snow, 230 Ark. 746, 324 S.W.2d 532 (1959).

20-15-709. Discharge.

(a) The superintendent of the institution to which a person has been committed under this subchapter may discharge the person so committed upon signing and placing among the records of the institution a statement that the person has obeyed the rules and regulations of the institution and that for the reasons set forth in the statement, in his or

her judgment the person may be discharged without danger to the health and life of others.

(b) The superintendent of the institution shall report each discharge with a full statement of reasons therefor at once to the Director of the Division of Health of the Department of Health and Human Services, to the county health officer of the county where the person was committed, and to the clerk of the court from which the person was committed.

History. Acts 1955, No. 161, §§ 12, 13;
A.S.A. 1947, §§ 82-622, 82-623.

CASE NOTES

Cited: State v. Snow, 230 Ark. 746, 324
S.W.2d 532 (1959).

20-15-710. Violations of commitment — Penalties.

(a) A person committed to an institution who is found guilty of violating the rules and regulations of the institution or of conducting himself or herself in a disorderly manner may be confined for a period not to exceed six (6) months in any place where persons convicted of disorderly conduct may be confined.

(b) Any person committed to an institution pursuant to this subchapter, who shall leave or attempt to leave the institution without being properly discharged by the superintendent of the institution or his or her authorized agent, shall be guilty of a misdemeanor and upon conviction shall be imprisoned for a period of not less than six (6) months nor more than one (1) year.

(c) Any person confined or imprisoned pursuant to this section shall be kept separate from the other inmates of the place of confinement. Upon completion of the period of confinement, he or she shall be returned to the hospital or sanatorium where originally committed.

(d) Any person confined or imprisoned pursuant to the provisions of this section may be confined or imprisoned in the hospital or sanatorium where originally committed if facilities for confinement or imprisonment are available at the hospital or sanatorium.

History. Acts 1955, No. 161, § 11;
1963, No. 174, § 1; A.S.A. 1947, § 82-621.

CASE NOTES

Cited: State v. Snow, 230 Ark. 746, 324
S.W.2d 532 (1959).

SUBCHAPTER 8 — SCOLIOSIS

SECTION.

20-15-801. Legislative determination.

20-15-802. Screening program.

SECTION.

20-15-803. Regulations.

Effective Dates. Acts 1987, No. 41, § 3; Feb. 16, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that scoliosis attacks children in their developing years; that it is relatively easy to conduct a scoliosis screening program and thereby detect the spinal curvature as soon as possible and begin treatment at the earliest stages of the disease; that the scoliosis screening program should commence as soon as possible; that it is necessary for the State Board of Health to promulgate regulations establishing the detailed pro-

cedures for conducting the scoliosis screening program; that the regulations should be promulgated as soon as possible in order to assure that the screening program can be implemented as soon as possible; and that this Act is immediately necessary to grant the Board of Health the authority to commence promulgating those regulations. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

20-15-801. Legislative determination.

(a) The General Assembly recognizes that scoliosis is a terrible disease of the spine which attacks young children during their formative years and that the spinal curvature can be relatively easily detected and should be treated as early as possible.

(b) The General Assembly has determined that the most logical entities to conduct a scoliosis screening program are our private schools, public schools, and other state-supported institutions providing education to our children.

History. Acts 1987, No. 41, § 1; 1989, No. 95, § 1.

20-15-802. Screening program.

Every public elementary and secondary school in this state, every other institution supported by state funds which provides education to our minor children, and all private institutions which provide education to our minor children shall as soon as possible institute a continuing scoliosis screening program to be conducted in accordance with regulations promulgated by the State Board of Health.

History. Acts 1987, No. 41, § 1; 1989, No. 95, § 2.

20-15-803. Regulations.

(a) The State Board of Health is directed to promulgate regulations as soon as possible to implement this subchapter.

(b) The regulations shall not be effective until concurred in by the State Board of Education.

(c) The regulations shall provide that no child shall be screened if his or her parent or guardian objects to the screening in writing, stating as the basis of the objection that it is contrary to the parent's or guardian's religious beliefs.

(d) The regulations shall provide that the schools shall not be required to hire personnel on a full-time, part-time, or consultant basis to conduct the screening, but they shall utilize school health personnel, volunteers, and other school employees who are not classroom teachers and who meet the qualifications prescribed by the regulations.

History. Acts 1987, No. 41, § 1.

SUBCHAPTER 9 — HUMAN IMMUNODEFICIENCY VIRUS OR ACQUIRED IMMUNODEFICIENCY SYNDROME

SECTION.

- 20-15-901. Free testing program — Confidentiality.
- 20-15-902. Counseling — Seminars.
- 20-15-903. Advising physician or dentist required — Penalty.
- 20-15-904. Reporting — Confidentiality — Subpoenas.
- 20-15-905. HIV Shield Law.

SECTION.

- 20-15-906. Report to Division of Health of the Department of Health and Human Services required — Privileged communications.
- 20-15-907. Title.
- 20-15-908. Findings and purpose.
- 20-15-909. Implementation.

Effective Dates. Acts 1989, No. 614, § 8: Mar. 16, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that a person with Acquired Immunodeficiency Syndrome (AIDS) or Human Immunodeficiency Virus (HIV) antigen or antibodies who acts irresponsibly with respect to sexual contact or with respect to transfer of blood or blood products constitutes a deadly threat to the public and health and welfare of the people of the state of Arkansas; that the incidence of Acquired Immunodeficiency Syndrome (AIDS) is increasing at an alarming rate and that Acquired Immunodeficiency Syndrome (AIDS) results in enormous social, health and economic costs, ultimately causing premature death of all those infected with Human Immunodeficiency Virus (HIV). Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 289, § 9: Feb. 28, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly of the State of Arkansas that health care providers require early information relating to the HIV status of patients when a physician determines that obtaining and providing such information is medically indicated; that such information is necessary to protect the public health from the spread of HIV; and that this act should go into effect immediately in order to better protect the public health from HIV infection. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force from and after its passage and approval."

Acts 1992 (1st Ex. Sess.), No. 72, § 9: Mar. 20, 1992. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain provisions of the Arkansas Code concerning payment of covered services are confusing

and misleading and could cause irreparable harm to citizens of Arkansas. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety the provisions of this Act shall be in full force and effect from and after its passage and approval."

Acts 2001, No. 235, § 4: Feb. 13, 2001. Emergency clause provided: "It is hereby found and determined by the Eighty-third General Assembly that there is a pressing and immediate need for the distribution of medications for HIV/AIDS to alleviate suffering, to protect pregnant women with HIV/AIDS and their unborn children and

to prevent severe damage to the medical infrastructure of Arkansas. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

RESEARCH REFERENCES

ALR. Discovery of identity of blood donors. 56 ALR 4th 755.

AIDS infection as affecting right to attend school. 60 ALR 4th 15.

Child custody and visitation rights of

person infected with AIDS. 86 ALR 4th 211.

C.J.S. 39A C.J.S., Health & E., § 19 et seq.

20-15-901. Free testing program — Confidentiality.

(a) The Division of Health of the Department of Health and Human Services shall institute an acquired immune deficiency syndrome (AIDS) testing program whereby any citizen may be tested for the virus without charge.

(b) The program shall be so devised as to maintain secrecy as to the identification of persons voluntarily participating in the program.

History. Acts 1987 (1st Ex. Sess.), No. 51, § 1.

20-15-902. Counseling — Seminars.

The Department of Education, the University of Arkansas for Medical Sciences, and the Division of Health of the Department of Health and Human Services shall jointly provide counseling and shall also conduct public seminars designed to educate the public regarding acquired immune deficiency syndrome (AIDS).

History. Acts 1987 (1st Ex. Sess.), No. 51, § 2.

20-15-903. Advising physician or dentist required — Penalty.

(a) Prior to receiving any health care services of a physician or dentist, any person who is found to have human immunodeficiency

virus (HIV) infection shall advise the physician or dentist that the person has human immunodeficiency virus (HIV) infection.

(b) Any person failing or refusing to comply with the provisions of subsection (a) of this section shall be guilty of a Class A misdemeanor and punished accordingly.

History. Acts 1989, No. 413, §§ 1, 2.

20-15-904. Reporting — Confidentiality — Subpoenas.

(a) A person with acquired immunodeficiency syndrome (AIDS) or who tests positive for the presence of human immunodeficiency virus (HIV) antigen or antibodies is infectious to others through the exchange of body fluids during sexual intercourse and through the parenteral transfer of blood or blood products and under these circumstances is a danger to the public.

(b) A physician whose patient is determined to have acquired immunodeficiency syndrome (AIDS) or who tests positive for the presence of human immunodeficiency virus (HIV) antigen or antibodies shall immediately make a report to the Division of Health of the Department of Health and Human Services in the manner and form as the division shall direct.

(c)(1) All information and reports in connection with persons suffering from or suspected to be suffering from the diseases specified in this section shall be regarded as confidential by every person, body, or committee whose duty it is or may be to obtain, make, transmit, and receive information and reports.

(2) However, any prosecuting attorney of this state may subpoena information as may be necessary to enforce the provisions of this section and §§ 5-14-123 and 16-82-101, provided that any information acquired pursuant to the subpoena shall not be disclosed except to the courts to enforce this section.

History. Acts 1989, No. 614, §§ 1, 3, 4. 614, § 1, is also codified as §§ 5-14-123(a)

Publisher's Notes. Acts 1989, No. and 16-82-101(a).

RESEARCH REFERENCES

UALR L.J. Survey, Criminal Law, 12
UALR L.J. 617.

CASE NOTES

Cited: Weaver v. State, 66 Ark. App. 528 U.S. 913, 120 S. Ct. 265, 145 L. Ed. 2d 249, 990 S.W.2d 572 (1999), cert. denied, 222 (1999).

20-15-905. HIV Shield Law.

(a) As used in this section:

(1) "Health care provider" means any physician, nurse, paramedic, or other person providing medical, nursing, or other health care services of any kind;

(2) "Health facility" means a hospital, nursing home, blood bank, blood center, sperm bank, or other health care institution;

(3) "HIV" means the human immunodeficiency virus or any other identified causative agent of acquired immunodeficiency syndrome;

(4) "Person" includes any natural person, partnership, association, joint venture, trust, governmental entity, public or private corporation, health facility, or other legal entity; and

(5) "Test" or "HIV test" means a test to determine the presence of the antibody or antigen to HIV or of HIV infection.

(b)(1) Consent is not required for a health care provider or health facility to perform a test when a health care provider or employee of a health facility is involved in a direct skin or mucous membrane contact with the blood or bodily fluids of an individual which is of a nature that may transmit HIV, as determined by a physician in his or her medical judgment.

(2)(A) The results of the test shall be provided by the person ordering the test to the affected health care provider or employee of a health facility, to the health care provider's or employee's physician, to the individual tested, and to the individual's physician.

(B) Appropriate counseling shall be provided along with the test results.

(c)(1) Informed consent, information, and counseling are not required for the performance of an HIV test when, in the judgment of the physician, the testing is medically indicated to provide an appropriate diagnosis and treatment to the subject of the test, provided that the subject of the test has otherwise provided his or her consent to the physician for medical treatment.

(2) If confirmatory testing is positive for evidence of HIV infection, the patient shall be informed.

(d) Health care providers or facilities may not deny appropriate care based upon the results of an HIV test.

(e)(1) Notwithstanding any other law to the contrary, no person who performs a test pursuant to subsection (b) or subsection (c) of this section shall be subject to civil or criminal liability for doing so.

(2) Notwithstanding any other law to the contrary, no person who discloses a test result in accordance with the provisions of subsection (b) of this section shall be subject to civil or criminal liability. However, nothing in this section shall be construed to limit the confidentiality for AIDS testing provided by § 20-15-901 or other provision of law unless testing is conducted pursuant to this section.

History. Acts 1991, No. 289, §§ 1-5;
1999, No. 1536, § 11.

20-15-906. Report to Division of Health of the Department of Health and Human Services required — Privileged communications.

(a) Reports shall be made to the Division of Health of the Department of Health and Human Services in the form and manner as may be required by the division for all persons who have been determined to have acquired immunodeficiency syndrome or who have tested positive for the presence of human immunodeficiency virus antigen or antibodies.

(b) Reporting is required by the following persons:

- (1) Physicians;
- (2) Hospital infection control practitioners and the chairs of hospital infection control committees;
- (3) Directors of laboratories doing business in the State of Arkansas;
- (4) Medical directors of in-home health agencies;
- (5) Program directors of state agencies to whom a human immunodeficiency virus or acquired immunodeficiency syndrome diagnosis has been disclosed;
- (6) Nursing home medical directors; and
- (7) Those other persons as are required by the rules and regulations of the division.

(c) Notwithstanding this section or any other law, the privileged communications provisions under §§ 17-103-107 and 17-103-108 are not repealed.

History. Acts 1991, No. 967, §§ 1, 2; 1992 (1st Ex. Sess.), No. 72, § 5; 1999, No. 1122, § 6.

Publisher's Notes. Acts 1991, No. 967, § 2 is also codified as § 17-39-108.

20-15-907. Title.

This section and §§ 20-15-908 and 20-15-909 shall be known and may be cited as the "Human Immunodeficiency Virus (HIV) or Acquired Immunodeficiency Syndrome (AIDS) Medications Act of 2001".

History. Acts 2001, No. 235, § 1.

RESEARCH REFERENCES

UALR L.J. Survey of Legislation, 2001 Arkansas General Assembly, Public Health and Welfare, 24 UALR L.J. 557.

20-15-908. Findings and purpose.

It is found and determined by the General Assembly that:

- (1) The citizens of Arkansas suffering from human immunodeficiency virus (HIV) or acquired immunodeficiency syndrome (AIDS) should have access to the latest drug therapies;

(2) The continued spread of human immunodeficiency virus (HIV) is a danger to the public health of Arkansas;

(3) Proper treatment of individuals living with human immunodeficiency virus (HIV) or acquired immunodeficiency syndrome (AIDS) who are pregnant can significantly decrease the possibility of infecting their unborn children;

(4) Infection rates among Arkansas citizens can be curtailed by the proper administration of drug therapies to those infected with human immunodeficiency virus (HIV) or acquired immunodeficiency syndrome (AIDS);

(5) The continued medical costs associated with illnesses related to human immunodeficiency virus (HIV) are a threat to the medical infrastructure of Arkansas;

(6) The quality of life of those individuals affected by human immunodeficiency virus (HIV) or acquired immunodeficiency syndrome (AIDS), along with the quality of life of their family members, can be enhanced through continuing drug therapies;

(7) There is a pressing and immediate need for the distribution of medications for human immunodeficiency virus (HIV) or acquired immunodeficiency (AIDS); and

(8) This section and §§ 20-15-907 and 20-15-909 can help meet these needs by furnishing financial assistance, subject to the availability of funds, to citizens of Arkansas suffering from human immunodeficiency virus (HIV) or acquired immunodeficiency syndrome (AIDS).

History. Acts 2001, No. 235, § 2.

20-15-909. Implementation.

The State Board of Health shall promulgate regulations to provide for the distribution of human immunodeficiency virus (HIV) or acquired immunodeficiency syndrome (AIDS) medications to Arkansas citizens without ample resources or available avenues to acquire their medically necessary medications.

History. Acts 2001, No. 235, § 3.

SUBCHAPTER 10 — BREAST CANCER — MAMMOGRAMS

SECTION.	SECTION.
20-15-1001. Legislative findings and intent.	20-15-1005. Fees.
20-15-1002. Definitions.	20-15-1006. Standards certification program.
20-15-1003. Advisory committee.	
20-15-1004. Accreditation of facilities required — Penalty.	

Effective Dates. Acts 1995, No. 508, § 9: Mar. 2, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of

Arkansas that in order to comply with federal mandates and support the Arkansas Department of Health in its efforts to maintain high accreditation standards for mammography facilities, this act should have immediate effect. Therefore, an

emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

20-15-1001. Legislative findings and intent.

The General Assembly finds and declares that:

(1) Breast cancer, according to the American Cancer Society, is the second leading cause of death among women in the United States;

(2) One (1) American woman in ten (10) will develop breast cancer in her lifetime;

(3) Mammography provides the earliest detection of breast cancer;

(4) Screening using mammography can significantly cut the death rate of women with breast cancer, especially for women with small tumors that have not invaded the lymph nodes and who have a ninety percent (90%) chance of surviving at least five (5) years when such tumors are diagnosed and removed;

(5) Both the American Cancer Society and the National Cancer Institute have developed age and frequency guidelines for mammogram screening, and those guidelines have been incorporated in this subchapter; and

(6) Therefore it is in the best interest for the general health and welfare of the people of the State of Arkansas that legislation be enacted encouraging health insurance coverage for screening mammography.

History. Acts 1989, No. 292, § 1.

20-15-1002. Definitions.

As used in this subchapter:

(1) "Accreditation body" means a body that has been approved by the United States Secretary of Health and Human Services to accredit mammography facilities under Pub. L. No. 102-539 (21 C.F.R. 900), the federal Mammography Quality Standards Act of 1992;

(2) "Department" means the Department of Health.

(3) "Diagnostic mammography" is a problem-solving radiologic procedure of higher intensity than screening mammography provided to women who are suspected of having breast pathology. Patients are usually referred for analysis of palpable abnormalities or for further evaluation of mammographically detected abnormalities. All images are immediately reviewed by the physician interpreting the study, and additional views are obtained as needed. A physical examination of the breast by the interpreting physician to correlate the radiologic findings is often performed as part of the study;

(4) "Mammography" means radiography of the breast; and

(5) "Screening mammography" is a radiologic procedure provided to a woman who has no signs or symptoms of breast cancer for the purpose of early detection of breast cancer. The procedure entails two (2) views of each breast and includes a physician's interpretation of the results of the procedure.

History. Acts 1989, No. 292, § 2; 1995, No. 508, § 1.

Publisher's Notes. Acts 1989, No. 292, § 2, is also codified as § 23-79-140(a).

U.S. Code. The Mammography Quality Standards Act of 1992, referred to in this section, is codified as a note to 42 U.S.C. § 201.

20-15-1003. Advisory committee.

(a) To assure the safety and accuracy of screening and diagnostic mammography and to promote the highest quality imaging in the most efficient setting to contain costs, radiological standards and quality assurance programs shall be established and administered by the Director of the Division of Health of the Department of Health and Human Services.

(b) To assist the Director of the Division of Health of the Department of Health and Human Services in establishing the quality standards, there is created an advisory committee to be composed of:

(1) The Director of Mammography of University Hospital Department of Radiology at the University of Arkansas for Medical Sciences, or his or her designee;

(2) The Chairman of the Breast Screening Project of the Arkansas Division of the American Cancer Society, or his or her designee;

(3) A physician appointed by the Council of the Arkansas Medical Society, or his or her designee;

(4) A health physicist from the Division of Radiation Control of the Division of Health of the Department of Health and Human Services, or his or her designee;

(5) A medical physicist with experience and training in mammography procedures appointed by the Director of the Division of Health of the Department of Health and Human Services;

(6) A registered X-ray technologist with experience and training in mammography practices and procedures appointed by the Director of the Division of Health of the Department of Health and Human Services; and

(7) The President of the Arkansas Chapter of the American College of Radiology, or his or her designee.

(c) The committee and the Director of the Division of Health of the Department of Health and Human Services shall continuously review and revise the quality standards in light of current scientific knowledge, but no less frequently than one (1) time every year.

History. Acts 1989, No. 292, § 5; 1995, No. 508, § 3.

20-15-1004. Accreditation of facilities required — Penalty.

(a)(1) The Director of the Division of Health of the Department of Health and Human Services shall establish quality standards for accreditation of facilities wherein mammography may be conducted in accordance with the Mammography Quality Standards Act of 1992, Pub. L. No. 102-539 (21 C.F.R. 900).

(2) The standards applicable to the physician who interprets mammograms shall not be more stringent than those standards listed in the Mammography Quality Standards Act of 1992, Pub. L. No. 102-539 (21 C.F.R. 900).

(b)(1) Such facilities shall be accredited by the Division of Health of the Department of Health and Human Services every three (3) years.

(2) No mammography shall be performed in an unaccredited facility after January 1, 1990.

(c) For facilities accredited by the division, documents of accreditation shall be nontransferable and shall expire three (3) years after being issued or at a time specified by the division.

(d) The owners of any unaccredited facility wherein mammography is performed after January 1, 1990, shall be subject to a civil penalty imposed by the division in an amount not to exceed one hundred dollars (\$100) for each day the facility operates without accreditation by the division.

History. Acts 1989, No. 292, § 6; 1995, No. 508, § 4.

U.S. Code. The Mammography Qual-

ity Standards Act of 1992, referred to in this section, is codified as a note to 42 U.S.C. § 201.

20-15-1005. Fees.

(a) As an accreditation body, the Division of Health of the Department of Health and Human Services may charge and collect the following fees:

(1) First mammography tube, seven hundred dollars (\$700) to be collected at the beginning of each three-year accreditation period;

(2) Each additional mammography tube, five hundred dollars (\$500) to be collected at the beginning of each three-year accreditation period; and

(3) Each additional review of clinical images and phantoms, one hundred dollars (\$100) to be collected at the time of submission of clinical images and phantoms for review, except that the maximum annual cost for additional review of clinical images and phantoms shall not exceed three hundred dollars (\$300).

(b)(1) The division may prorate the accreditation fee for a mammography tube that is accredited for less than the three-year accreditation period.

(2) The division may bill on an annual basis for one-third ($\frac{1}{3}$) of the accreditation fee.

(c)(1) All revenue derived from fees collected pursuant to this section shall be deposited into the State Treasury and credited to the Public Health Fund.

(2) Subject to such rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the Division of Health of the Department of Health and Human Services may transfer all unexpended funds that pertain to fees collected, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose in any following fiscal year.

History. Acts 1995, No. 508, § 5.

20-15-1006. Standards certification program.

The Division of Health of the Department of Health and Human Services may operate a mammography quality standards certification program in accordance with the Mammography Quality Standards Act of 1992, Pub. L. No. 102-539 (21 C.F.R. 900), to:

- (1) Issue initial and renewal certificates to mammography facilities;
- (2) Conduct inspections and determine compliance of certified facilities; and
- (3) Impose sanctions, to include:
 - (A) Suspension or revocation of certification;
 - (B) Injunctions to restrict unsafe or illegal activities in mammography facilities; and
 - (C) Civil penalties.

History. Acts 1995, No. 508, § 5.

U.S. Code. The federal Mammography Standards Act of 1992, referred to in this

section, is codified as a note under 42 U.S.C. § 201.

SUBCHAPTER 11 — NEWBORN INFANT HEARING SCREENING PROGRAM

SECTION.

- 20-15-1101. Purpose.
- 20-15-1102. Definitions.
- 20-15-1103. Creation.
- 20-15-1104. Screening of newborns.

SECTION.

- 20-15-1105. Provision of services — Test results — Follow-up care.
- 20-15-1106. Coordination of services.
- 20-15-1107. Immunity.

Preambles. Acts 1993, No. 1096 contained a preamble which read:

“WHEREAS, uncorrected hearing loss during the critical language-learning period can severely limit a child’s capability for developing a complete and effective communication system; and

“WHEREAS, delayed identification also delays instruction in speech and language, auditory training and visual modes of communication, timely counseling, ed-

ucation for families and remedial intervention; and

“WHEREAS, the cost to provide special education services increases significantly with delayed identification; and

“WHEREAS, while an estimated point seven percent (0.7%) or two hundred fifty (250) of the approximately thirty-six thousand (36,000) annual births in the state will suffer a permanent hearing impairment, only ten percent (10%) of those are

currently being identified for early treatment; and

“WHEREAS, through early identification and follow-up, children born with hearing impairments can develop effective

communication systems which improve their quality of life and increase their potential to become productive citizens;

“NOW THEREFORE, ...”

20-15-1101. Purpose.

The purpose of this subchapter is to provide a statewide coordinated early intervention program to identify and follow up with testing and treatment of newborn infants who are at risk for hearing impairment.

History. Acts 1993, No. 1096, § 1.

20-15-1102. Definitions.

As used in this subchapter:

(1) “Division” means the Division of Health of the Department of Health and Human Services;

(2) “Newborn infant with hearing impairment” means a newborn infant who has a disorder of the auditory system of any type or degree causing a hearing impairment sufficient to interfere with the development of language and speech skills;

(3) “Newborn infants at risk” means those newborn infants who are at risk for hearing impairment because they have one (1) or more risk factors;

(4) “Program” means the Newborn Infant Hearing Screening Program;

(5) “Risk factors” are those criteria or factors, any one (1) of which identifies a newborn infant as being at risk for hearing impairment, as determined by the division and set forth in rules and regulations promulgated by the division;

(6) “Screening infants for hearing impairment” means a procedure for employing a device for identifying a disorder of the auditory system, but the procedure may not necessarily provide a comprehensive determination of hearing thresholds in the speech range. Such a procedure may include auditory brainstem response screening or other devices approved by the division; and

(7) “Screening report” means a report by a facility providing screening for hearing impairment which identifies each newborn infant who has been screened for hearing impairment.

History. Acts 1993, No. 1096, § 2.

20-15-1103. Creation.

(a) There is established in the Division of Health of the Department of Health and Human Services a program to be known as the “Newborn Infant Hearing Screening Program”. The program shall provide for the early identification and follow-up of newborn infants at risk.

(b) The program shall include:

(1) Development through the promulgation of rules and regulations and criteria or factors to identify those newborn infants who are at risk for hearing impairment or of developing a progressive hearing impairment;

(2) Creation of a Hearing Impairment Registry to include, but not be limited to, the identification of newborn infants at risk for hearing impairment, infants with hearing impairment, and infants at risk of developing a progressive hearing impairment;

(3) Development of a hearing impairment at-risk questionnaire. The instrument shall be provided by the division to hospitals, birthing centers, and lay midwives for use in the program;

(4) Development of appropriate written materials regarding hearing impairment. The materials shall be provided to hospitals, birthing centers, and lay midwives for their use in the program;

(5) Development of a means of establishing contact with parents, guardians, and physicians of newborn infants with hearing impairment, of newborn infants at risk, and of infants at risk of developing a progressive hearing impairment;

(6) Establishment of a telephone hot line to communicate information about hearing impairment, hearing screening, audiological evaluation, and other services for infants with hearing impairment;

(7) Development of a screening report to be used by all facilities screening infants for hearing impairment to provide information to the division for a tracking system for newborn infants at risk; and

(8) A data collection system.

History. Acts 1993, No. 1096, § 3.

20-15-1104. Screening of newborns.

(a)(1) All hospitals, birthing centers, and lay midwives shall complete a hearing impairment at-risk questionnaire for each newborn infant prior to discharge or, in the case of a lay midwife, within seventy-two (72) hours of the birth of the infant.

(2) All hearing impairment at-risk questionnaires shall be completed by a designee of the hospital or birthing center or by the midwife.

(3) However, no infant shall be screened for hearing impairment whose parent presents a written statement that he or she objects to the screening of his or her child.

(b) The hospital, birthing center, or lay midwife shall forward to the Division of Health of the Department of Health and Human Services a copy of all completed questionnaires.

(c) The hospital, birthing center, or lay midwife shall provide the parents or guardians of all newborn infants with written materials provided by the division concerning hearing impairment.

History. Acts 1993, No. 1096, § 4;
1995, No. 1296, § 78.

20-15-1105. Provision of services — Test results — Follow-up care.

(a) The hospital, birthing center, or lay midwife may elect to provide for the screening of infants for hearing impairment but is not required to do so by this subchapter.

(b) Any facility screening infants for hearing impairment shall forward test results on a screening report to the Division of Health of the Department of Health and Human Services by the fifteenth of the month following the month in which the test was conducted.

(c) Any facility screening infants for hearing impairment shall provide information on locations at which medical and audiological follow-up can be obtained by the parents or guardians of infants with hearing impairment.

History. Acts 1993, No. 1096, §§ 4, 5.

20-15-1106. Coordination of services.

The Division of Health of the Department of Health and Human Services, the Department of Education, and the Department of Health and Human Services shall work cooperatively and develop a plan to coordinate early educational and rehabilitative services for newborn infants identified as hearing impaired.

History. Acts 1993, No. 1096, § 6.

20-15-1107. Immunity.

Any person or entity who reports in good faith and without malice or who in good faith and without malice fails to report the information required by this subchapter shall have immunity from any liability, civil or criminal, that might be incurred or imposed in any action resulting from such a report. Any such person or entity shall have the same immunity with respect to participation in any judicial proceeding resulting from such a report.

History. Acts 1993, No. 1096, § 7.

SUBCHAPTER 12 — IMMUNIZATION REGISTRATION**SECTION.**

20-15-1201. Definitions.

20-15-1202. Statewide childhood immunization registry.

SECTION.

20-15-1203. Duty of providers — Penalty.

20-15-1201. Definitions.

As used in this subchapter:

(1) “Board” means the State Board of Health;

(2) “Division” means the Division of Health of the Department of Health and Human Services; and

(3) “Provider” means any health care professional who has direct or supervisory responsibility for the delivery of immunizations.

History. Acts 1995, No. 432, § 1.

20-15-1202. Statewide childhood immunization registry.

(a) The Division of Health of the Department of Health and Human Services shall establish a statewide childhood immunization registry. Immunization records shall include data as specified by the division.

(b) The division may make information regarding the immunization status of children in the registry available to the parents or guardians of a child, to providers who report on the immunization status of children in their care, and to such other persons or organizations designated by rule or regulation of the State Board of Health.

(c) The board shall promulgate regulations needed to implement this subchapter, including provisions for confidentiality of medical information.

History. Acts 1995, No. 432, § 2; 1997, No. 869, § 1.

20-15-1203. Duty of providers — Penalty.

(a)(1) All providers shall register with the Division of Health of the Department of Health and Human Services their intent to administer childhood immunizations to persons under twenty-two (22) years of age in accordance with guidelines established by the division.

(2) All providers shall report to the division the administration of any childhood immunization to any person under twenty-two (22) years of age.

(b) Any provider who administers an immunization and fails to register with the division or make the required reports to the division, or both, shall be fined twenty-five dollars (\$25.00).

History. Acts 1995, No. 432, § 3.

SUBCHAPTER 13 — BREAST CANCER ACT OF 1997

SECTION.

- 20-15-1301. Title.
- 20-15-1302. Legislative findings and intent.
- 20-15-1303. Breast Cancer Research Program — Funding.

SECTION.

- 20-15-1304. Advisory board — Breast Cancer Control Program.

Effective Dates. Acts 1997, No. 434, § 18: July 1, 1997. Emergency clause provided: “It is hereby found and determined that cancer is a leading cause of death among Arkansans; that, of cancer deaths,

breast cancer claims more lives of women than any other type except lung cancer; that there are nineteen hundred (1900) new cases of breast cancer diagnosed each year; that breast cancer mortality rates

have increased in Arkansas is recent years; that presently breast cancer is claiming the lives of over four hundred seventy (470) women in Arkansas each year; that this number of deaths will increase as our population grows older; that information barriers result in women being unaware of the risk of breast cancer or the value of early detection; that financial barriers prevent some women from taking advantage of mammography; and that there is a lack of funding for breast cancer research in the state; it is further found and determined that to reduce the number of lives continuing to be needlessly lost, it is necessary to increase the state tax on cigarettes and tobacco products to provide funding for breast cancer, to provide for screening, diagnostic, and treatment services for women at risk of devel-

oping breast cancer and to assure continuing research with respect to the cause, cure and prevention of breast cancer. This act will provide greatly needed revenues to fund essential research and services with respect to the cause, cure, detection and prevention of breast cancer, and breast cancer education in the state. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1997."

Cross References. Wholesaler to pay taxes and reports and remittances of taxes, § 26-57-211.

Stamp deputies, § 26-57-236.

Wholesale motor fuel excise tax, § 26-57-1101 et seq.

20-15-1301. Title.

This act shall be known and may be cited as the "Breast Cancer Act of 1997".

History. Acts 1997, No. 434, § 1.

Meaning of "this act". Acts 1997, No. 434, codified as §§ 20-15-1301 — 20-15-

1304, 26-57-211, 26-57-236, and 26-57-1101 — 26-57-1108.

20-15-1302. Legislative findings and intent.

The General Assembly finds and declares as follows:

(1) Breast cancer is a significant threat to the health of women. Breast cancer is the most common form of cancer in women and causes the death of a woman in the United States every twelve (12) minutes;

(2) The incidence of breast cancer continues to increase at a dramatic rate. During the past decade, the incidence has increased by thirty percent (30%). In 1960, one (1) woman in twenty (20) developed breast cancer over the course of her lifetime. By 1992, the probability had increased to one (1) woman in eight (8). At the current rate of increase, in the year 2000, one (1) woman in six (6) will develop breast cancer over the course of her lifetime. Presently, breast cancer claims the lives of over four hundred seventy (470) women in Arkansas each year;

(3) Breast cancer exacts an enormous economic toll on our society, including over two billion dollars (\$2,000,000,000) in direct medical costs, and over eight billion dollars (\$8,000,000,000) in both direct medical and indirect costs;

(4) Medical experts still do not know the cause of breast cancer or how to prevent breast cancer;

(5) The State of Arkansas must take the lead in combatting the increasingly rapid spread of breast cancer and the current lack of

knowledge with respect to breast cancer's cause and cure and effective methods of prevention; and

(6) It is the intent of the General Assembly in enacting this act to fund essential research and services with respect to the cause, cure, detection and prevention of breast cancer, and breast cancer education.

History. Acts 1997, No. 434, § 2.

1304, 26-57-211, 26-57-236, and 26-57-

Meaning of "this act". Acts 1997, No.

1101 — 26-57-1108.

434, codified as §§ 20-15-1301 — 20-15-

20-15-1303. Breast Cancer Research Program — Funding.

There is established in the University of Arkansas a Breast Cancer Research Program. This program shall support research efforts into the cause, cure, treatment, earlier detection, and prevention of breast cancer and shall be administered according to the following principles:

(1) The program shall fund innovative research and the dissemination of successful research findings, with special emphasis on research that complements, rather than duplicates, the research funded by the federal government and other entities;

(2)(A) All research grants shall be awarded on the basis of the research priorities established for the program and the scientific merit of the proposed research as determined by a peer review process governed by the Oversight Committee on Breast Cancer Research.

(B) The committee shall consist of seven (7) members appointed by the Governor, as follows:

(i) One (1) shall be appointed to represent the Arkansas Medical Society;

(ii) One (1) shall represent the Arkansas Hospital Association;

(iii) One (1) shall represent the medical oncology community;

(iv) One (1) shall be a women's health advocate; and

(v) Three (3) shall represent the University of Arkansas System.

(C) Each of the four (4) congressional districts shall be represented by at least one (1) member.

(D) The members shall serve for a period of four (4) years;

(3) The peer review process for the selection of research grants awarded under this program shall be generally modeled on that used by the National Institutes of Health in its grant-making process, and the peer review process may stipulate that an applicant shall have participated in an established grant process prior to applying for a grant under this subchapter;

(4) An awardee shall be awarded grants for the full or partial cost of conducting the sponsored research grants and contracts; and

(5) All intellectual property assets developed under this program shall be treated in accordance with state and federal law.

History. Acts 1997, No. 434, § 3.

"(D) The members of said committee shall

A.C.R.C. Notes. As enacted by Acts 1997, No. 434, subdivision (2)(D) read:

serve for a period of four (4) years; provided, that the members draw lots to

determine that the first members appointed serve as follows: two (2) until January 1, 1999; two (2) until January 1, 2000, and three (3) until January 1, 2001.”

20-15-1304. Advisory board — Breast Cancer Control Program.

(a)(1) There is hereby established a Breast Cancer Control Advisory Board, which shall consist of eight (8) members appointed by the Governor, as follows:

(A) One (1) member shall be appointed to represent the Arkansas Medical Society;

(B) One (1) member shall represent the Arkansas Chapter of the Susan G. Komen Breast Cancer Foundation;

(C) One (1) member shall represent the Arkansas Hospital Association;

(D) One (1) member shall represent the American Cancer Society;

(E) One (1) member shall represent the Arkansas Nursing Association;

(F) One (1) member shall represent the medical oncology community;

(G) One (1) member shall represent the radiation oncology community; and

(H) One (1) member shall be a women's health advocate.

(2) Each of the four (4) congressional districts shall be represented by at least one (1) member.

(3) The members shall serve for a period of four (4) years.

(b)(1) There is established in the Division of Health of the Department of Health and Human Services the Breast Cancer Control Program. This program shall provide for the early detection, diagnosis, and treatment of breast cancer.

(2) The program shall be administered according to the following principles:

(A) The program shall provide for breast cancer education and awareness so as to ensure early detection and conduct surveillance activities across the state;

(B) The program shall provide screening of women for breast cancer, including mammography, as an early detection health care measure;

(C) After screening, the program shall provide medical referrals and financial assistance for services necessary for definitive diagnoses, including nonradiological techniques and biopsy; and

(D) If a positive diagnosis is made, the program shall provide the necessary advocacy and financial assistance to help the person obtain necessary treatment.

History. Acts 1997, No. 434, § 4.

A.C.R.C. Notes. As enacted, subdivision (a)(3) provided: “The members of said committee shall serve for a period of four

(4) years, provided, that the members draw lots to determine that the first members appointed shall serve as follows: two (2) members shall serve until January 1,

1999; three (3) members shall serve until January 1, 2000; and three (3) members shall serve until January 1, 2001.”

SUBCHAPTER 14 — OSTEOPOROSIS PREVENTION EDUCATION ACT OF 1997

SECTION.

20-15-1401. Title.

20-15-1402. Legislative findings.

20-15-1403. Osteoporosis prevention and treatment education program — Funding.

SECTION.

20-15-1404. Evaluation by Division of Health of the Department of Health and Human Services.

20-15-1401. Title.

This subchapter may be cited as the “Osteoporosis Prevention Education Act of 1997”.

History. Acts 1997, No. 732, § 1.

20-15-1402. Legislative findings.

It is found and determined by the General Assembly that:

(1) Osteoporosis, a bone-thinning disease, is a major public health problem that poses a threat to the health and quality of life of as many as twenty-five million (25,000,000) Americans;

(2) The annual direct and indirect costs of osteoporosis to the health care system are estimated to be as high as eighteen billion dollars (\$18,000,000,000) in 1993 and are expected to rise above sixty billion dollars (\$60,000,000,000) in the year 2020;

(3) Since osteoporosis progresses silently and currently has no cure, prevention, early diagnosis, and treatment are keys to reducing the prevalence of devastation from this disease;

(4) Experts in the field of osteoporosis believe that with greater awareness of the value of prevention among medical experts, service providers, and the public, osteoporosis will be preventable and treatable in the future, thereby reducing the costs of long-term care and improving the quality of life for all Americans; and

(5) Educating the public and the health care community throughout the State of Arkansas about this potentially devastating disease is of paramount importance and is in every respect in the public interest and to the benefit of all Arkansans.

History. Acts 1997, No. 732, § 2.

20-15-1403. Osteoporosis prevention and treatment education program — Funding.

(a) The Division of Health of the Department of Health and Human Services shall coordinate with other agencies and organizations as funds become available to establish, promote, and maintain an osteoporosis prevention and treatment education program in order to raise

public awareness, to educate consumers, to educate and train health professionals and service providers, and to carry out other purposes.

(b) For purposes of administering this subchapter, the State Health Officer shall do all of the following:

(1) Identify the appropriate entities to carry out an osteoporosis prevention and treatment education program;

(2) Work to improve the capacity of community-based services to osteoporosis patients;

(3) Work with governmental offices, community and business leaders, community organizations, health care and human service providers, and national osteoporosis organizations to coordinate efforts and maximize state resources in the areas of prevention, education, and treatment of osteoporosis; and

(4) Identify and, as funds become available, replicate or use successful osteoporosis programs and procure related materials and services from organizations with appropriate expertise and knowledge of osteoporosis.

(c) As funds become available, the division shall use the following strategies for raising public awareness on the causes and nature of osteoporosis, the personal risk factors, the value of prevention and early detection, and the options for diagnosing and treating the disease:

(1) An outreach campaign utilizing print, radio, and television public service announcements, advertisements, posters, and other materials;

(2) Providing health information and risk factor assessment in regard to osteoporosis at public events;

(3) Targeting populations at risk for osteoporosis;

(4) Providing reliable information about osteoporosis to policy makers;

(5) Distributing information through county health departments, schools, area agencies on aging, employer wellness programs, physicians, hospitals and health maintenance organizations, women's groups, nonprofit organizations, and community-based organizations; and

(6) Any other strategy for raising public awareness about osteoporosis that is consistent with the provisions of this subchapter.

(d) As funds become available, the division shall use the following strategies for educating and training physicians, health professionals, and community service providers in regard to the most up-to-date, accurate scientific and medical information on osteoporosis prevention, diagnosis, and treatment, therapeutic decision-making about osteoporosis, guidelines for detecting and treating osteoporosis in special populations, and risks and benefits of medications and research advances:

(1) Identify and obtain educational materials for the professional health care provider which translate the latest scientific and medical information into clinical applications;

(2) Raise awareness among professional health care providers as to the importance of osteoporosis prevention, early detection, treatment, and rehabilitation; and

(3) Provide workshops and seminars for in-depth professional development in the field of the care and management of the patient with osteoporosis.

History. Acts 1997, No. 732, § 3.

20-15-1404. Evaluation by Division of Health of the Department of Health and Human Services.

The Division of Health of the Department of Health and Human Services may evaluate any or all of the following:

- (1) The research on osteoporosis being conducted within the state;
- (2) The available technical assistance, educational materials, and osteoporosis programs nationwide;
- (3) The level of public and professional awareness about osteoporosis;
- (4) The needs of osteoporosis patients, their families, and their caregivers;
- (5) The needs of health care providers, including physicians, nurses, and managed care organizations, in regard to caring for the osteoporosis patient;
- (6) The services available to the osteoporosis patient;
- (7) The existence of osteoporosis treatment programs;
- (8) The existence of osteoporosis support groups; and
- (9) The existence of rehabilitation services for osteoporosis patients.

History. Acts 1997, No. 732, § 4.

SUBCHAPTER 15 — UNIVERSAL NEWBORN HEARING SCREENING, TRACKING, AND INTERVENTION PROGRAM AND ADVISORY BOARD

SECTION.	SECTION.	
20-15-1501. Purpose.		Intervention
20-15-1502. Definitions.		Board.
20-15-1503. Universal Newborn Hearing Screening, Tracking, and	20-15-1504. Testing — Results.	Advisory
	20-15-1505. Exemption.	

20-15-1501. Purpose.

- The purpose of this subchapter is to:
- (1) Provide early detection of hearing loss by physiological measurement in newborn children at the birthing facility or as soon after birth as possible;
 - (2) Enable these children and their families and caregivers to obtain needed multidisciplinary evaluation, treatment, and intervention services at the earliest opportunity; and
 - (3) Prevent or mitigate the developmental delays and academic failures associated with late identification of hearing loss; and
 - (4) Provide the state with the information necessary to effectively plan, establish, and evaluate a comprehensive system of appropriate services for newborns and infants who have a hearing loss or are deaf.

History. Acts 1999, No. 1559, § 1.

20-15-1502. Definitions.

As used in this subchapter:

- (1) "Birth admission" means the time after birth that the newborn remains in the hospital nursery prior to discharge;
- (2) "Birthing hospital" means any hospital located within the State of Arkansas that delivers newborns;
- (3) "Board" means the Universal Newborn Hearing Screening, Tracking, and Intervention Advisory Board;
- (4) "Director" means the Director of the Division of Health of the Department of Health and Human Services;
- (5) "Division" means the Division of Health of the Department of Health and Human Services;
- (6) "Follow-up care" and "follow-up screening" means the follow-up services provided by a licensed audiologist to diagnose a hearing loss;
- (7) "Hearing loss" means an impairment that is a dysfunction of the auditory system of any type or degree sufficient to interfere with acquisition and development of speech and language skills;
- (8) "Hearing screening" means a bilateral physiological measurement of hearing on a newborn or infant;
- (9) "Infant" means a child thirty (30) days to twelve (12) months old;
- (10) "Intervention" means amplification by a licensed audiologist as required and early intervention services described in Part H of the Individuals with Disabilities Education Act as in effect January 1, 1999;
- (11) "Newborn" means a child up to twenty-nine (29) days old;
- (12) "Parent" means a natural parent, stepparent, adoptive parent, legal guardian, or other legal custodian of a child;
- (13) "Program" means the Universal Newborn Infant Hearing Screening, Tracking, and Intervention Program; and
- (14) "Provider" means an audiologist licensed by the State of Arkansas who administers initial newborn and infant hearing screenings upon referral from a hospital or physician or follow-up screenings outside of the hospital setting.

History. Acts 1999, No. 1559, § 2.

U.S. Code. The Individuals with Disabilities Education Act, referred to in this section, is primarily codified as 20 U.S.C.

§ 1400 et seq. Part H is the subchapter on infants and toddlers with disabilities and is codified as 20 U.S.C. §§ 1471-1485.

20-15-1503. Universal Newborn Hearing Screening, Tracking, and Intervention Advisory Board.

(a) There is created the Universal Newborn Hearing Screening, Tracking, and Intervention Advisory Board.

(b) The board shall be composed of seven (7) members appointed by the Governor, with recommendations from the Arkansas Speech-Language-Hearing Association, from the following professions or groups:

- (1) One (1) audiologist;

(2) One (1) audiologist from the Division of Health of the Department of Health and Human Services;

(3) One (1) audiologist from Arkansas Children's Hospital;

(4) One (1) speech-language pathologist;

(5) One (1) pediatrician-neonatologist or ear, nose, and throat physician;

(6) One (1) adult who is deaf or hard of hearing to represent consumer organizations for deaf and hard of hearing persons; and

(7) One (1) consumer of services who is a parent of a child or children with hearing loss.

(c)(1) Members shall be appointed for three-year staggered terms to be assigned by lot.

(2) The terms shall commence on January 15 of each year.

(d) The board shall annually select by a majority vote one (1) of its members to serve as a chair and one (1) to serve as vice chair.

(e) The Governor may remove any member of the board for misconduct, incompetency, or neglect of duty, or for any malfeasance in office.

(f) The board shall act by majority vote and as required by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(g) The board shall have the authority to recommend rules and regulations to implement this subchapter, and the Division of Health of the Department of Health and Human Services shall promulgate these rules and regulations by July 1, 2000.

(h)(1) The board shall hold its first meeting within thirty (30) days of July 30, 1999, at a place designated by the division.

(2) Subsequent meetings shall be held quarterly at the call of the chair or as often as necessary to make recommendations to the division so that the rules and regulations implementing this subchapter can be promulgated by July 1, 2000.

(3) The board shall complete an annual report for the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor which provides information such as, but not limited to, the number of hospitals in compliance with this subchapter, the number of hearing-impaired infants identified, and the availability of follow-up services.

(i) The division shall provide administrative support services required by the board.

(j) Members shall not be entitled to compensation for their services but may receive expense reimbursement and a stipend in accordance with § 25-16-902.

History. Acts 1999, No. 1559, § 3.

A.C.R.C. Notes. As enacted, subsection (c) also provided: "(A) The terms of four (4) of the original members shall

expire on January 14, 2001. (B) The terms of three (3) of the original members shall expire on January 14, 2002."

20-15-1504. Testing — Results.

(a) After July 30, 1999, and promulgation of rules and regulations, every birthing hospital in this state with more than fifty (50) births per year shall provide or arrange for a bilateral physiological hearing screening on each birth admission. Medicaid shall reimburse the birthing hospital for the physiological screening with the reimbursement equal to that amount paid outpatient providers for the same service in addition to the current rate of per diem paid to the hospital.

(b) Any birthing hospital, provider, or physician administering initial hearing screenings to newborns and infants shall forward test results on a screening report to the Division of Health of the Department of Health and Human Services by the fifteenth day of the month following the month in which the test was conducted.

(c) Any birthing hospital, provider, or physician screening newborns and infants shall provide information on locations at which medical and audiological follow-up care and follow-up screening can be obtained by the parents or guardians of the newborns and infants.

(d) All providers or physicians completing follow-up screening or follow-up care for the hearing impairment shall forward test results on a screening report to the division by the fifteenth day of the month following the month in which the test was conducted.

History. Acts 1999, No. 1559, § 4.

20-15-1505. Exemption.

No test is to be performed if the parent of a newborn or infant dissents on the ground that the test conflicts with a personal religious belief or practice.

History. Acts 1999, No. 1559, § 5.

SUBCHAPTER 16 — PROSTATE CANCER ACT OF 1999**SECTION.**

20-15-1601. Title.

20-15-1602. Legislative findings.

20-15-1603. Oversight Committee on
Prostate and Testicular
Cancer.

SECTION.

20-15-1604. Powers and duties of the
Oversight Committee on
Prostate and Testicular
Cancer.

Effective Dates. Acts 1999, No. 397, § 8: July 1, 1999. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that prostate cancer is a leading cause of death among Arkansans; that there is a lack of funding for prostate cancer research in the state; and that there is a crucial need for a program

which will provide screening, diagnostic and treatment services for men at risk of developing prostate cancer and assure continuing research with respect to the causes, cures and prevention of prostate cancer. Therefore an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace health and safety shall be in full

force and effect from and after July 1, 1999.”

20-15-1601. Title.

This subchapter shall be known and may be cited as the “Prostate Cancer Act of 1999”.

History. Acts 1999, No. 397, § 1.

20-15-1602. Legislative findings.

(a) The General Assembly finds that:

(1) Prostate cancer is the most common cancer and the second leading cause of cancer death among men, causing approximately one hundred eighty-four thousand five hundred (184,500) new cases and approximately thirty-nine thousand two hundred (39,200) deaths in the United States annually. This means that approximately two thousand four hundred (2,400) Arkansas men will develop prostate cancer in any year and approximately five hundred (500) men will die of it;

(2) The elderly population and rural nature of Arkansas combine to make prostate cancer a greater problem here than in most states. Prostate cancer is rarely diagnosed in men younger than fifty (50) years of age, and the rate of prostate cancer increases faster with age than does any other malignancy. The median age of diagnosis is seventy-two (72) years. Men living in rural areas are diagnosed with higher-stage prostate cancer than men living in urban areas;

(3) In the United States, African-American men face a far greater risk from prostate cancer than do Caucasian men. Caucasian-American men will contract prostate cancer at a rate of one hundred forty-seven and three-tenths per one hundred thousand (147.3/100,000). African-American men will contract prostate cancer at a rate of two hundred twenty-two and nine tenths per one hundred thousand thousand (222.9/100,000). Caucasian-Americans will suffer twenty-three and seven tenths deaths per one hundred thousand thousand (23.7/100,000) from prostate cancer each year, while African-American men will suffer fifty-four and eight tenths deaths per one hundred thousand (54.8/100,000);

(4) In Arkansas, twenty-seven percent (27%) of African-American men are over forty (40) years of age, and forty-seven percent (47%) live in rural areas. African-American men are less likely to participate in screening than men in other subpopulations despite the fact that they have an increased risk. Only forty-two percent (42%) of African-American men fifty (50) to seventy (70) years of age have undergone digital rectal examinations in their lifetimes, versus fifty-nine percent (59%) of Caucasian men in the same age range;

(5) Men who have prostate cancer detected in the earlier stages have significantly better five-year survival rates of ninety-four percent

(94%), compared to those men who have their cancer diagnosed in advanced states, thirty percent (30%). Despite this positive statistical finding, widespread prostate cancer screening remains controversial because of the variability of the growth of the disease, the slow-growing nature of many prostate cancers, the limited accuracy of screening tests, and the significant side effects of treatment;

(6) About seven thousand (7,000) Americans were expected to get testicular cancer in 2001, with an estimated three hundred twenty-five (325) deaths. Compared with prostate cancer, testicular cancer is relatively rare. However, in men fifteen (15) to thirty-four (34) years of age, it ranks as the most common cancer. For unknown reasons, the disease is about four (4) times more common in Caucasian men than in African-American men;

(7) Only fifteen (15) years ago, a diagnosis of testicular cancer was grim news. Ten (10) times as many patients died then as now. But dramatic advances in therapeutic drugs in the last two (2) decades, along with improved diagnostics and better tests to gauge the extent of the disease, have boosted survival rates remarkably. Now, testicular cancer often is completely curable, especially if found and treated early. About seventy percent (70%) of men with advanced testicular cancer can be cured, according to the National Cancer Institute;

(8) Advocates of screening hope to save the lives of thousands of men dying of prostate cancer. Opponents of screening fear that needless suffering will result from the treatment of men with occult disease who are not destined to develop clinical symptoms;

(9)(A) The high death rate from prostate cancer in African-Americans suggests a need for special attention to reduce this mortality rate. In November 1997, the American Cancer Society, the National Cancer Institute, and the Centers for Disease Control and Prevention sponsored a leadership conference on prostate cancer. The resulting Prostate Cancer National Blueprint for Action calls for:

- (i) Research in basic and behavioral science;
- (ii) Health promotion and education based on science;
- (iii) Education and support for patients; and
- (iv) Public policy action.

(B) The Prostate Cancer National Blueprint for Action also recommends that primary care practitioners be educated to interact with patients and participate in discussions that will lead to informed decisions; and

(10) The State of Arkansas should take the lead in combatting prostate and testicular cancer because of our population's characteristics and the high risk of prostate and testicular cancer.

(b)(1) It is the intent of the General Assembly in enacting this subchapter to fund services with respect to large-population screening for prostate and testicular cancer and to provide educational services to the men of Arkansas regarding prostate and testicular cancer.

(2) At least fifty percent (50%) of all funding available to administer this subchapter shall be used to provide for the early detection,

diagnosis, or treatment of prostate and testicular cancer and for prostate and testicular cancer education and awareness.

History. Acts 1999, No. 397, § 2; 2001, No. 1455, § 1.

Amendments. The 2001 amendment rewrote this section.

20-15-1603. Oversight Committee on Prostate and Testicular Cancer.

(a) The Oversight Committee on Prostate and Testicular Cancer is created and shall be composed of seven (7) members as follows:

(1) One (1) individual from the private medical community who shall be a practicing urologist, a practicing radiation therapist, or a practicing medical oncologist;

(2) One (1) faculty member from the Arkansas Cancer Research Center of the University of Arkansas for Medical Sciences;

(3) One (1) representative from the American Cancer Society;

(4) One (1) public health educator;

(5) The Director of the Division of Health of the Department of Health and Human Services or the director's designee; and

(6) Two (2) men's advocates, one (1) of whom shall be an African-American survivor of prostate or testicular cancer and one (1) of whom shall be a representative of the Arkansas Prostate Cancer Foundation.

(b) The Governor shall appoint the members, subject to confirmation by the Senate.

(c) No more than two (2) of the members shall be appointed from any one (1) of the four (4) congressional districts of the state.

(d) The members shall serve for terms of four (4) years, except that the initial members shall draw lots to result in:

(1) Two (2) to serve until January 1, 2004;

(2) Two (2) to serve until January 1, 2005; and

(3) Three (3) to serve until January 1, 2006.

(e) The Chancellor of the University of Arkansas for Medical Sciences, with the concurrence of the committee, shall designate one (1) of the committee members as the chair.

(f) In case of a vacancy occurring in any of the offices by death, resignation, or otherwise, the Governor shall fill the office by appointment for the unexpired term, subject to confirmation by the Senate.

(g) A quorum of the committee shall consist of four (4) members.

(h) Members shall not be entitled to compensation for their services but shall be eligible to receive reimbursement for mileage and reimbursement for expenses in accordance with § 25-16-902.

History. Acts 1999, No. 397, § 3; 2001, No. 1455, § 2; 2003, No. 865, § 2.

A.C.R.C. Notes. Acts 2001, No. 1455, § 2 amended § 20-15-1603 but did not set out or specifically delete former subdivisions (c)(1)-(5). Former subsection (c) read as follows:

"(c) No more than two (2) of the members shall be appointed from any one (1) of the four (4) congressional districts of the state: (1) One (1) practicing urologist from the private medical community; (2) One (1) practicing radiation therapist from the private medical community; (3) One (1)

practicing medical oncologist from the private medical community; (4) Three (3) faculty members from the Arkansas Cancer Research Center of the University of Arkansas for Medical Sciences; and (5) One (1) men's health advocate."

Acts 2003, No. 865, § 1, provided: "This act shall not affect the terms of members

of the Oversight Committee on Prostate and Testicular Cancer serving on the effective date of this act [July 16, 2003]."

Amendments. The 2001 amendment rewrote this section.

The 2003 amendment substituted "an African-American survivor" for "a survivor" in (a)(6).

20-15-1604. Powers and duties of the Oversight Committee on Prostate and Testicular Cancer.

(a) Subject to the availability of funding, the Oversight Committee on Prostate and Testicular Cancer shall:

(1) Provide for the early detection, diagnosis, and treatment of prostate and testicular cancer according to the following principles:

(A) Prostate and testicular cancer education and awareness will help to ensure early detection and to conduct surveillance activities across the state; and

(B)(i) Screening of men for prostate and testicular cancer will act as an early detection health care measure.

(ii) After screening, medical referrals and financial assistance will help to ensure access to services necessary for definitive diagnosis, including nonradiological techniques and biopsy.

(iii) If a positive diagnosis is made, necessary advocacy and financial assistance will help the person obtain necessary treatment;

(2) Financially support research efforts into the cause, cure, prevention, detection, and treatment of prostate and testicular cancer;

(3) Develop, formulate, and distribute information related to prostate and testicular cancer, including guidelines for detection, treatment, and overall management;

(4) Coordinate a large-scale screening program in Arkansas to gather data regarding the validity of such a program and then expand the screening program if it proves to be valuable;

(5) Fund innovative biomedical and behavioral research with emphasis on complementing existing research efforts rather than duplicating research already funded by the federal government or other entities; and

(6) Fund endowed academic chairs, professorships, symposia, and other special projects related to prostate and testicular cancer.

(b)(1) All research, public education, professional education, and treatment grants pertaining to prostate and testicular cancer shall be awarded on the basis of the priorities established for the program and the scientific and social merit of the proposed research as determined by a peer-review process governed by the committee.

(2) The peer-review process for the selection of research grants awarded under this program shall be generally modeled on that used by the National Institutes of Health in its grant-making process.

(c) Recipients of Arkansas State Cancer Program support may include not-for-profit organizations, including public and private groups in the community and higher education.

(d) Awardees may be awarded grants for the full or partial cost of conducting sponsored research grants and contracts.

(e) The committee shall coordinate with other agencies and organizations, including the Division of Health of the Department of Health and Human Services, as funds become available, to establish, promote, and maintain a prostate and testicular cancer prevention and treatment education program to raise public awareness, educate consumers, and educate and train health professionals and service providers.

(f) The Arkansas Minority Health Commission shall support the work of the committee by:

- (1) Providing education and awareness programs;
- (2) Supporting research;
- (3) Supporting screening programs; and
- (4) Distributing information on the prevention, treatment, and detection of prostate and testicular cancer in the male population of Arkansas.

History. Acts 1999, No. 397, § 4; 2001, No. 1455, § 3; 2003, No. 865, § 3.

Amendments. The 2001 amendment inserted “and testicular” following “prostate” throughout; added “subject to the

availability of funding, shall” in (a); inserted the present (a)(1) and redesignated the remaining subdivisions accordingly; and added (e).

The 2003 amendment added (f).

SUBCHAPTER 17 — COLORECTAL CANCER ACT OF 2005

SECTION.

- 20-15-1701. Title.
- 20-15-1702. Findings and purpose.
- 20-15-1703. Colorectal Cancer Control

and Research Program —
Demonstration project.

Effective Dates. Acts 2005, No. 2236, § 3: Aug. 1, 2005. Emergency clause provided: “It is hereby found and determined that colorectal cancer is a leading cause of death among Arkansas residents; that this number of deaths will increase as our population grows older; that colorectal cancer is a preventable disease; that information barriers result in Arkansas residents being unaware of the risk of colorectal cancer or the value of screening,

prevention, and early detection; that financial barriers prevent some Arkansas residents from taking advantage of screening; and that there is a lack of funding to provide for screening, diagnostic, and treatment services for persons at risk of colorectal cancer. Therefore, this act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after August 1, 2005.”

20-15-1701. Title.

This subchapter shall be known and may be cited as the “Colorectal Cancer Act of 2005”.

History. Acts 2005, No. 2236, § 1.

20-15-1702. Findings and purpose.

(a) The General Assembly finds that:

(1) Colorectal cancer is a significant threat to the health of Arkansas residents;

(2) Colorectal cancer is more likely to occur as persons get older. More than ninety percent (90%) of people with this disease are diagnosed after fifty (50) years of age;

(3) In Arkansas, it is estimated that one thousand six hundred thirty (1,630) new cases of cancer of the colon and rectum will occur in 2005;

(4) Colorectal cancer exacts an enormous economic toll on our society in direct medical costs and indirect costs such as lost work due to illness and shortened lives among experienced workers;

(5) Colorectal cancer is largely preventable; and

(6) Screening for colorectal cancer can identify the precursors of cancer before the disease begins and the precursors can be removed, thus preventing the emergence of any colorectal cancer.

(b) This subchapter is intended to reduce the physical and economic burden of colorectal cancer in Arkansas by supporting research and cancer control activities.

History. Acts 2005, No. 2236, § 1.

20-15-1703. Colorectal Cancer Control and Research Program — Demonstration project.

(a) There is established within the Arkansas Cancer Research Center at the University of Arkansas for Medical Sciences in collaboration with the Division of Health of the Department of Health and Human Services a Colorectal Cancer Control and Research Program.

(b)(1) The first phase of this program shall be the Colorectal Cancer Control Demonstration Project.

(2) The goal of the demonstration project is to:

(A) Assess the resources in this state that will enable Arkansas residents to obtain colorectal screening examinations and laboratory tests, to include a fecal occult blood test, double contrast barium enema, flexible sigmoidoscopy, and colonoscopy; and

(B) Plan and implement an educational and screening intervention program.

(c) The demonstration project shall be established at the Arkansas Cancer Research Center at the University of Arkansas for Medical Sciences and shall consist of the following:

(1) An assessment shall be made to:

(A) Identify the number of facilities in the state that provide double contrast barium enema, flexible sigmoidoscopy, and colonoscopy;

(B) Identify physicians, including family practitioners, gastroenterologists, and surgical endoscopists who perform colonoscopy in the state and the regions of the state in which they practice;

(C) Evaluate differences in cost across facilities as compared to Medicare payment for procedures; and

(D) Identify and evaluate available resources for follow-up diagnostics and treatment as needed;

(2)(A) Education and screening intervention to demonstrate the effectiveness of providing education and access to screening in order to increase the number of Arkansas residents who obtain screening.

(B)(i) The education and screening intervention segment of the demonstration project will enroll Arkansas residents over fifty (50) years of age from multiple sites who are identified as having the highest colorectal cancer incidence and mortality in each of the five (5) regions of the state through the Department of Health and Human Services' Hometown Health Improvement Initiative.

(ii) The number of individuals to be enrolled shall be determined by the extent of funding available.

(iii) The project segment will study three (3) approaches to education and screening as follows:

(a) Provision of an educational intervention designed to teach the individual about the need to seek screening;

(b) Provision of access to screening with no educational intervention; and

(c) Provision of educational intervention and access together.

(iv)(a) Access to screening may include payment vouchers for those patients determined to be underinsured or uninsured.

(b) The vouchers shall be redeemable by project participants for screening services obtained through participating physicians in each of the five (5) regions; and

(3)(A) Evaluation at the end of the demonstration period by project leaders to identify the program's effectiveness in increasing the number of individuals who obtained screening for colorectal cancer.

(B) The program evaluation information, coupled with the results of the assessment of screening resources in this state, will help to establish strategies for meeting the long-term goal under subsection (d) of this section.

(d)(1) The program will build on the results of the demonstration project to meet the long-term goal of the program.

(2) The long-term goal of the program is to reduce the physical and economic burden of colorectal cancer in this state by:

(A) Supporting research efforts into the cause, cure, treatment, early detection, and prevention of colorectal cancer and the survivorship of individuals diagnosed with colorectal cancer;

(B) Supporting research and educational activities that will inform the public of the value of colorectal cancer screening and will result in improved methods to promote screening and early detection;

(C) Supporting policy research to review and analyze long-term successes and future opportunities for reducing the burden of colorectal cancer through legislation;

(D) Providing for the full continuum of care, prevention, early detection, diagnosis, treatment, and cure of colorectal cancer; and

(E) Requiring providers to offer a wide range of colorectal cancer screening options.

(e)(1) The program shall provide for the full continuum of care, prevention, early detection, diagnosis, treatment, cure of colorectal cancer, and survivorship.

(2) The program shall be administered to:

(A) Provide colorectal cancer education and awareness to promote prevention and early detection;

(B) Provide colorectal cancer surveillance activities across the state;

(C) Provide screening for colorectal cancer with special focus on persons fifty (50) years of age and older and persons at high risk for colorectal cancer;

(D) Provide after-screening, medical referrals, and financial assistance for services necessary to follow up abnormal screening exams;

(E) Provide necessary advocacy and financial assistance to ensure that the persons obtain necessary treatment if a positive diagnosis is made; and

(F) Obtain information from health care insurers and providers concerning the extent of colorectal cancer screening, treatment, and insurance coverage.

History. Acts 2005, No. 2236, § 1.

CHAPTER 16

REPRODUCTIVE HEALTH

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS REPRODUCTIVE HEALTH MONITORING SYSTEM.
3. ARKANSAS FAMILY PLANNING ACT.
4. REPRODUCTIVE HEALTH INFORMATION.
5. SEXUALLY TRANSMITTED DISEASES.
6. ABORTION GENERALLY.
7. ABORTION — VIABLE FETUS.
8. ABORTION — PARENTAL NOTIFICATION.
9. WOMAN'S RIGHT TO KNOW ACT OF 2001.
10. HUMAN CLONING.
11. UNBORN CHILD PAIN AWARENESS AND PREVENTION ACT.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

20-16-101. Authorization to continue the
Mississippi County Mid-
wife Program.

Effective Dates. Acts 1989, No. 99 (1st Ex. Sess.), § 41: July 1, 1989. Emergency clause provided: "It is hereby found and

determined by the Seventy-Seventh General Assembly, that the Constitution of the State of Arkansas prohibits the appropri-

ation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1989 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1989 could work irrep-

arable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1989."

RESEARCH REFERENCES

ALR. State regulation of midwifery. 59 ALR 4th 929.

20-16-101. Authorization to continue the Mississippi County Midwife Program.

The Director of the Division of Health of the Department of Health and Human Services may continue the Mississippi County Midwife Program utilizing available state and federal funding.

History. Acts 1989, No. 99 (1st Ex. Sess.), § 35.

A.C.R.C. Notes. Former § 20-16-101, concerning authorization to continue the

Mississippi County Midwife Program, is deemed to be superseded by this section. The former section was derived from Acts 1985, No. 718, § 27.

SUBCHAPTER 2 — ARKANSAS REPRODUCTIVE HEALTH MONITORING SYSTEM

SECTION.

- 20-16-201. Establishment — Purpose.
- 20-16-202. Definitions.
- 20-16-203. Advisory commission — Members — Functions.
- 20-16-204. Technical advisory board — Members — Functions.
- 20-16-205. Director — Appointment — Powers and duties.
- 20-16-206. Authority to contract for information.
- 20-16-207. Information confidential — Exception.
- 20-16-208. Furnishing of information by hospitals.

SECTION.

- 20-16-209. Furnishing of information by physician, clinic, etc.
- 20-16-210. Intergovernmental agreements.
- 20-16-211. Funding and implementation.
- 20-16-212. Reports.
- 20-16-213. Rendering of patient care and regulatory activity prohibited.
- 20-16-214. No actionable right, presumptions, or findings created.

Effective Dates. Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas

Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved

nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by

the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

20-16-201. Establishment — Purpose.

(a) The Arkansas Reproductive Health Monitoring System is established and is to be administered within Arkansas Children's Hospital.

(b) The purpose of the system is to collect and analyze data from a number of sources to describe trends in the occurrence of reproductive endpoints, such as congenital anomalies, fetal death, developmental disorders, etc., and to correlate those trends and investigate and report on the suspected causes of unexpected deviations in those trends.

History. Acts 1985, No. 214, § 1;
A.S.A. 1947, § 82-4608.

20-16-202. Definitions.

As used in this subchapter.

(1) "Board" means the technical advisory board established in § 20-16-204;

(2) "Commission" means the advisory commission established in § 20-16-203; and

(3) "System" means the Arkansas Reproductive Health Monitoring System.

History. Acts 1985, No. 214, § 3;
A.S.A. 1947, § 82-4610.

20-16-203. Advisory commission — Members — Functions.

(a) The Arkansas Reproductive Health Monitoring System shall be administered with the advice of an advisory commission appointed to one-year renewable terms by the Medical Director of Arkansas Children's Hospital.

(b) The functions of the commission are to:

(1) Advise the medical director as to the adequacy of policies, procedures, and performance of the system;

(2) Appoint members of the board upon the recommendations of the medical director;

(3) Promote the purposes of the system and assist in identification of appropriate funding sources;

(4) Promote interagency cooperation toward the goals of this system;

(5) Advise the medical director regarding requests for data dissemination; and

(6) Review mechanisms ensuring the maintenance of the confidentiality of personal data.

(c) The commission shall be composed of the following state agencies, professional members, and public members:

- (1) The Medical Director of Arkansas Children's Hospital;
 - (2) The Chancellor of the University of Arkansas for Medical Sciences;
 - (3) The Director of the Division of Health of the Department of Health and Human Services;
 - (4) The Director of the Department of Health and Human Services;
 - (5) The Director of the Arkansas Department of Environmental Quality;
 - (6) The Director of the National Center for Toxicological Research;
 - (7) One (1) representative of the Arkansas Medical Society;
 - (8) One (1) representative of the Arkansas Academy of Pediatrics;
 - (9) One (1) representative of the Arkansas Society for Obstetrics & Gynecology;
 - (10) One (1) representative of the Arkansas Hospital Association;
 - (11) One (1) representative of the State Plant Board;
 - (12) Two (2) consumer representatives;
 - (13) One (1) member from House Interim Committee on Public Health, Welfare, and Labor and one (1) member from the Senate Interim Committee on Public Health, Welfare, and Labor; and
 - (14) Up to four (4) additional members at large may be appointed.
- (d) Members of the commission who are not employees of the state may receive expense reimbursement in accordance with § 25-16-901 et seq.

History. Acts 1985, No. 214, §§ 4, 11; 1997, No. 250, § 188; 1999, No. 1164, A.S.A. 1947, §§ 82-4611, 82-4618; Acts § 173.

20-16-204. Technical advisory board — Members — Functions.

(a) There shall be a technical advisory board whose function shall be to:

- (1) Advise the director regarding formats for data collection procedures;
- (2) Advise the director regarding special investigations;
- (3) Review protocols, reporting forms, data assembly, and the records retention program;
- (4) Assist in identifying data resources, data needs, research needs, and local expertise; and
- (5) Delineate the specific adverse reproductive health outcomes to be monitored.

(b)(1) Board members shall be appointed to one-year renewable terms by the Medical Director of the Arkansas Children's Hospital upon recommendation of the commission and the director.

(2) The board shall comprise a maximum of ten (10) regular members drawn from fields of expertise such as medicine, industrial hygiene and toxicology, agriculture, environmental sciences, and epidemiology and statistics.

(3) At the discretion of the board and the director, ad hoc members of the board may be appointed for specified periods to advise on special needs or problems which have been identified.

(c) Members of the board who are not employees of the state may receive expense reimbursement in accordance with § 25-16-901 et seq.

History. Acts 1985, No. 214, §§ 5, 11;
A.S.A. 1947, §§ 82-4612, 82-4618; Acts
1997, No. 250, § 189.

20-16-205. Director — Appointment — Powers and duties.

(a) The Arkansas Reproductive Health Monitoring System shall be administered by a director appointed by the Medical Director of Arkansas Children's Hospital from among the professional staff of Arkansas Children's Hospital.

(b) The director shall:

- (1) Supervise the work of the system and administer the budget;
- (2) Appoint and remove such other employees as may be necessary to perform the duties and responsibilities of the system; and
- (3) Select and retain the services of consultants whose advice is considered necessary to carry out the system's mandate.

History. Acts 1985, No. 214, § 2;
A.S.A. 1947, § 82-4609.

20-16-206. Authority to contract for information.

(a) The Arkansas Reproductive Health Monitoring System is expressly authorized to contract for the production of any information which its technical advisory board determines to be relevant to monitoring reproductive health from any department or agency of the state.

(b) Information shared under this section includes, but is not limited to, information identified by name or other personal identifier, including information concerning any system by which such data or information is identified or classified if required to decipher the information.

History. Acts 1985, No. 214, § 6;
A.S.A. 1947, § 82-4613.

20-16-207. Information confidential — Exception.

The Arkansas Reproductive Health Monitoring System is expressly exempted and prohibited from supplying any information by individual name or other personal identifier or in a form other than a statistical report or other appropriate form which protects the confidentiality of individuals except to any state agency or department which originally supplied the information to the system unless both the originating agency and the system grant release of this information for a specific purpose.

History. Acts 1985, No. 214, § 7;
A.S.A. 1947, § 82-4614.

20-16-208. Furnishing of information by hospitals.

(a) All hospitals with patient records containing information pertaining to reproduction and development are required to share information in those records with the Arkansas Reproductive Health Monitoring System.

(b) No hospital shall be required to furnish information under this section until appropriate reimbursement in return for the service has been determined by the commission and funds are available to pay the compensation.

History. Acts 1985, No. 214, § 8;
A.S.A. 1947, § 82-4615.

20-16-209. Furnishing of information by physician, clinic, etc.

(a) Any physician, clinic, person, or organization may provide information relative to reproductive health to the Arkansas Reproductive Health Monitoring System.

(b) No liability of any kind for damages or other relief shall arise or be enforced against any person or organization for having provided the information or for having released or published the findings of the system in order to reduce morbidity or mortality or to advance medical research or medical education.

History. Acts 1985, No. 214, § 9;
A.S.A. 1947, § 82-4616.

20-16-210. Intergovernmental agreements.

The Arkansas Reproductive Health Monitoring System shall have the power to enter into agreements with neighboring states and the Centers for Disease Control and Prevention consistent with the requirements and restrictions of this subchapter in order to obtain relevant information for the system concerning Arkansas residents who receive health-related services outside the state.

History. Acts 1985, No. 214, § 10;
A.S.A. 1947, § 82-4617.

20-16-211. Funding and implementation.

(a) The Arkansas Reproductive Health Monitoring System shall have the power to receive and expend grants, donations, and funds from public and private sources to carry out its responsibilities under this subchapter.

(b) Arkansas Children's Hospital is not required to implement this system unless sufficient funds are available as determined by the Medical Director of Arkansas Children's Hospital.

(c) The system may be implemented in stages or phases.

History. Acts 1985, No. 214, § 13;
A.S.A. 1947, § 82-4620.

20-16-212. Reports.

The Arkansas Reproductive Health Monitoring System shall periodically prepare reports of its findings for dissemination to appropriate agencies and interested persons.

History. Acts 1985, No. 214, § 14;
A.S.A. 1947, § 82-4621.

20-16-213. Rendering of patient care and regulatory activity prohibited.

The Arkansas Reproductive Health Monitoring System is expressly prohibited from rendering patient care, promulgating any rule or regulation, or engaging in any regulatory activity.

History. Acts 1985, No. 214, § 13;
A.S.A. 1947, § 82-4620.

20-16-214. No actionable right, presumptions, or findings created.

(a) Persons other than the state or Arkansas Reproductive Health Monitoring System shall not acquire any actionable right by virtue of this subchapter.

(b) A determination by the system that a source is suspected of causing adverse reproductive health outcomes shall not create by reason thereof any presumption of law or finding of a fact which shall inure to, or be for, the benefit of any person other than the state.

History. Acts 1985, No. 214, § 12;
A.S.A. 1947, § 82-4619.

SUBCHAPTER 3 — ARKANSAS FAMILY PLANNING ACT

SECTION.	SECTION.
20-16-301. Title.	procedures, supplies, and information — Exceptions.
20-16-302. Legislative declaration.	
20-16-303. Definitions.	20-16-305. Liability for surgical sterilization.
20-16-304. Public policy — Availability of	

Cross References. Abortion, § 5-61-101.

RESEARCH REFERENCES

ALR. Administering or prescribing birth control pills or devices. 9 ALR 4th 372.

Am. Jur. 12 Am. Jur. 2d, Birth Control, §§ 4-6.

Ark. L. Rev. Note, Wilbur v. Kerr: The Tort of Wrongful Birth in Arkansas, 36 Ark. L. Rev. 429.

C.J.S. 1 C.J.S., Abortion & B.C., §§ 2, 3.

20-16-301. Title.

This subchapter shall be known and may be cited as the "Arkansas Family Planning Act".

History. Acts 1973, No. 235, § 1;
A.S.A. 1947, § 82-3101.

20-16-302. Legislative declaration.

It is the declaration of the General Assembly that:

(1) Continuing population growth either causes or aggravates many social, economic, and environmental problems, both in this state and in the nation;

(2) Contraceptive procedures, supplies, and information as to and procedures for voluntary sterilization are not sufficiently available as a practical matter to many persons in this state;

(3) It is desirable that inhibitions and restrictions be eliminated so that all persons desiring and needing contraceptive procedures, supplies, and information shall have ready and practicable access thereto through legally recognized channels; and

(4) Section 20-16-304 sets forth the policy and authority of this state, its political subdivisions, and all agencies and institutions thereof, including prohibitions against restrictions, with respect to contraceptive procedures, supplies, and information.

History. Acts 1973, No. 235, § 3;
A.S.A. 1947, § 82-3103.

20-16-303. Definitions.

As used in this subchapter.

(1) "Contraceptive procedures" means any medically accepted procedures designed to prevent conception; and

(2) "Contraceptive supplies" means those medically approved items designed to prevent conception through chemical, mechanical, or other means.

History. Acts 1973, No. 235, § 2;
A.S.A. 1947, § 82-3102.

20-16-304. Public policy — Availability of procedures, supplies, and information — Exceptions.

It shall be the policy and authority of this state that:

(1) All medically acceptable contraceptive procedures, supplies, and information shall be available through legally recognized channels to each person desirous of the procedures, supplies, and information regardless of sex, race, age, income, number of children, marital status, citizenship, or motive;

(2) Medical procedures for permanent sterilization, when performed by a physician on a requesting and consenting person eighteen (18) years of age or older, or less than eighteen (18) years of age if legally married, be consistent with public policy;

(3) Dissemination of medically acceptable contraceptive information in this state and in state and county health and welfare departments, in medical facilities, at institutions of higher learning, and at other agencies and instrumentalities of this state be consistent with public policy;

(4) Nothing in this subchapter shall prohibit a physician, pharmacist, or any other authorized paramedical personnel from refusing to furnish any contraceptive procedures, supplies, or information; and

(5) No private institution or physician, nor any agent or employee of the institution or physician, nor any employee of a public institution acting under directions of a physician, shall be prohibited from refusing to provide contraceptive procedures, supplies, and information when the refusal is based upon religious or conscientious objection. No such institution, employee, agent, or physician shall be held liable for the refusal.

History. Acts 1973, No. 235, § 4;
A.S.A. 1947, § 82-3104.

20-16-305. Liability for surgical sterilization.

Subject to the rules of law applicable generally to negligence, no physician or surgeon licensed by this state shall be liable civilly or criminally by reason of having performed surgical sterilization authorized by the provisions of this subchapter upon any person in this state.

History. Acts 1973, No. 235, § 5;
A.S.A. 1947, § 82-3105.

SUBCHAPTER 4 — REPRODUCTIVE HEALTH INFORMATION**SECTION.**

20-16-401. Division of Health of the Department of Health and Human Services.

20-16-402. Information from state agencies.

SECTION.

20-16-403. Information from neighboring states.

20-16-404. Information sharing.

20-16-405. Authority of physician to provide information.

SECTION.

20-16-406. No actionable right created.

20-16-407. No legal presumption or finding of fact created.

SECTION.

20-16-408. Nonliability.

Cross References. Confidentiality of information and records used in medical research, § 20-9-304.

RESEARCH REFERENCES

C.J.S. 1 C.J.S., Abortion & B.C., § 7 et seq.

20-16-401. Division of Health of the Department of Health and Human Services.

This subchapter shall not be applicable to the Division of Health of the Department of Health and Human Services.

History. Acts 1983, No. 773, § 7; A.S.A. 1947, § 82-4607.

20-16-402. Information from state agencies.

(a)(1) Any bona fide appropriately licensed medical facility, including, but not limited to, county hospitals, participating in recognized research in Arkansas and the Centers for Disease Control and Prevention are expressly authorized to contract for the production of any information relevant to monitoring reproductive health from any department or agency of the state.

(2) Information acquired under this subsection includes, but is not limited to, information identified by name or other personal identifying information including the method by which the information was compiled or tabulated.

(b) The University of Arkansas for Medical Sciences, Arkansas Children's Hospital, other participating medical facilities as described in subsection (a) of this section, and the Centers for Disease Control and Prevention are expressly prohibited from supplying any information obtained pursuant to subsection (a) of this section by individual name or other personal identifying information or in a form other than a statistical report or other appropriate form which protects the confidentiality of individuals.

(c) Information obtained pursuant to subsection (a) of this section may be returned to any state agency or department from which it was originally obtained.

History. Acts 1983, No. 773, §§ 1, 3; A.S.A. 1947, §§ 82-4601, 82-4603.

20-16-403. Information from neighboring states.

The University of Arkansas for Medical Sciences, Arkansas Children's Hospital, and the Centers for Disease Control and Prevention shall have the power to enter into agreements with neighboring states consistent with the requirements and restrictions of this subchapter in order to obtain relevant information concerning Arkansas residents who receive health-related services outside the state.

History. Acts 1983, No. 773, § 5;
A.S.A. 1947, § 82-4605.

20-16-404. Information sharing.

All hospitals with pediatric, obstetric, or spontaneous abortion patient records may under this subchapter contract to share information in those records with the University of Arkansas for Medical Sciences, Arkansas Children's Hospital, other bona fide licensed medical facilities, and the Centers for Disease Control and Prevention.

History. Acts 1983, No. 773, § 2;
A.S.A. 1947, § 82-4602.

20-16-405. Authority of physician to provide information.

Any physician, clinic, person, or organization may under this subchapter contract to provide information relative to reproductive health to the University of Arkansas for Medical Sciences, Arkansas Children's Hospital, and the Centers for Disease Control and Prevention.

History. Acts 1983, No. 773, § 4;
A.S.A. 1947, § 82-4604.

20-16-406. No actionable right created.

Persons other than the state, the University of Arkansas for Medical Sciences, Arkansas Children's Hospital, and the Centers for Disease Control and Prevention shall not acquire any actionable right by virtue of this subchapter.

History. Acts 1983, No. 773, § 6;
A.S.A. 1947, § 82-4606.

20-16-407. No legal presumption or finding of fact created.

A determination by a study done under this subchapter that a source is suspected of causing adverse fetal or neonatal health outcomes shall not create by reason thereof any presumption of law or finding of a fact which shall inure to or be for the benefit of any person other than the state.

History. Acts 1983, No. 773, § 6;
A.S.A. 1947, § 82-4606.

20-16-408. Nonliability.

No liability of any kind for damages or other relief shall arise or be enforced against any person or organization by reason of having provided information pursuant to this subchapter or by reason of having released or published the findings of research studies in order to reduce morbidity or mortality or to advance medical research or medical education based on information shared under this subchapter.

History. Acts 1983, No. 773, § 4;
A.S.A. 1947, § 82-4604.

SUBCHAPTER 5 — SEXUALLY TRANSMITTED DISEASES

SECTION.

- 20-16-501. Notification required.
- 20-16-502. Notification — Contents.
- 20-16-503. Notification — Physician's duty.
- 20-16-504. Notification — Information confidential.

SECTION.

- 20-16-505. Notification — Authority to regulate.
- 20-16-506. Failure to notify — Penalty.
- 20-16-507. Testing of pregnant women required.
- 20-16-508. Treatment of minors.

Preambles. Acts 1947, No. 71, contained a preamble which read: "Whereas, syphilis may be transmitted from the infected mother to the unborn child and the fact that such congenital syphilis can be

prevented if the disease is recognized in the mother and prompt adequate treatment is given..."
Effective Dates. Acts 1947, No. 71, § 5: July 1, 1947.

RESEARCH REFERENCES

ALR. Tort liability for infliction of venereal disease. 40 ALR 4th 1089.
Physician's tort liability for unautho-

rized disclosure of confidential information about patient. 48 ALR 4th 668.

20-16-501. Notification required.

(a) Any person who determines by laboratory examination that a specimen derived from a human body yields microscopical, cultural, serological, or other evidence suggestive of those venereal diseases enumerated in subsection (b) of this section shall notify the Division of Health Maintenance of the Division of Health of the Department of Health and Human Services of such findings.

(b) Notice shall be given for the following conditions or diseases:

- (1) Syphilis;
- (2) Gonorrhea;
- (3) Chancroid;
- (4) Lymphogranuloma Venereum; and
- (5) Granuloma Inguinale.

(c) Specific reportable venereal disease tests are:

- (1) All reactive or positive and weakly reactive or doubtful serological tests for syphilis;
- (2) All reactive or positive and weakly reactive or doubtful spinal fluid serological tests for syphilis;
- (3) All positive darkfield microscopic tests for *treponema pallidum*;
- (4) All positive gonococcal smears or cultures; and
- (5) All positive tests indicating the presence of Ducrey's bacillus, known as chancroid, or Donovan bodies, known as Granuloma Inguinale, or filterable virus, known as Lymphogranuloma Venereum.

History. Acts 1973, No. 60, §§ 1, 3;
A.S.A. 1947, §§ 82-632, 82-634.

RESEARCH REFERENCES

Ark. L. Rev. Note, Baker v. State: The Arkansas Physician-Patient Privilege Re-examined, 36 Ark. L. Rev. 658.

CASE NOTES

Cited: Baker v. State, 276 Ark. 193, 637 S.W.2d 522 (1982).

20-16-502. Notification — Contents.

(a) Notification shall contain the total number of tests performed by type, number of negative specimens, and number of positive or doubtful specimens.

(b) Notification of positive or doubtful test results shall contain the name, age, sex, and address of the person from whom the specimen was obtained and the name and address of the physician for whom the examination or test was performed.

(c) Notification also shall contain the name of the test performed, the date the test was performed, and the result of the test performed.

(d) Notification shall be submitted in writing and in such form and manner as prescribed by regulations of the Division of Health Maintenance of the Division of Health of the Department of Health and Human Services.

History. Acts 1973, No. 60, § 2; A.S.A. 1947, § 82-633.

20-16-503. Notification — Physician's duty.

Laboratory reporting under §§ 20-16-501 — 20-16-506 shall in no way release the attending physician from his or her responsibility to report cases of venereal diseases to the Division of Health Maintenance of the Division of Health of the Department of Health and Human Services.

History. Acts 1973, No. 60, § 7; A.S.A. 1947, § 82-638.

20-16-504. Notification — Information confidential.

All laboratory notifications required by §§ 20-16-501 — 20-16-506 are confidential and shall not be open for inspection by anyone except public health personnel.

History. Acts 1973, No. 60, § 4; A.S.A. 1947, § 82-635.

CASE NOTES

Cited: Baker v. State, 276 Ark. 193, 637 S.W.2d 522 (1982).

20-16-505. Notification — Authority to regulate.

The Division of Health Maintenance of the Division of Health of the Department of Health and Human Services may enact each rule and regulation as is necessary to assure compliance with §§ 20-16-501 — 20-16-506.

History. Acts 1973, No. 60, § 6; A.S.A. 1947, § 82-637.

20-16-506. Failure to notify — Penalty.

Failure to give notice as provided in §§ 20-16-501 — 20-16-505 shall be a violation and upon conviction shall be punishable by a fine of not less than ten dollars (\$10.00) nor more than twenty-five dollars (\$25.00).

History. Acts 1973, No. 60, § 5; A.S.A. 1947, § 82-636; Acts 2005, No. 1994, § 112.

Amendments. The 2005 amendment substituted “violation and upon conviction” for “misdemeanor and.”

20-16-507. Testing of pregnant women required.

(a)(1)(A) Every physician and health care provider attending pregnant women in this state for conditions relating to their pregnancy shall, in the case of every woman so attended, take or cause to be taken a sample of venous blood or other approved specimen of the woman as early as reasonably possible in the pregnancy or, if not attended prenatally, at the time of delivery, and shall submit the sample to an approved laboratory for:

- (i) A standard serological test for syphilis;
- (ii) A standard test for human immunodeficiency virus; and
- (iii) A standard test for hepatitis B.

(B) If for any reason the pregnant woman is not tested for syphilis, human immunodeficiency virus, or hepatitis B, that fact shall be recorded in the patient's records, which, if based upon the refusal of

the patient, shall relieve the physician of any responsibility under this subsection.

(2) Every other person authorized by law to attend or to provide medical treatment to pregnant women in this state but not permitted by law to take blood samples shall cause a sample of blood or other approved specimen of the pregnant woman to be taken as early as reasonably possible in the pregnancy or, if not attended prenatally, at the time of delivery, by or under the direction of a physician licensed to practice medicine and surgery and have the sample submitted to an approved laboratory for:

(A) A standard serological test for syphilis;

(B) A standard test for human immunodeficiency virus; and

(C) A standard test for hepatitis B.

(3) Every physician described in subdivision (a)(1) of this section and every person described in subdivision (a)(2) of this section shall:

(A) Inform each pregnant woman whom he or she is attending of the fact that syphilis, human immunodeficiency virus, and hepatitis B may be transmitted from an infected mother to the fetus or unborn child and that these infections may be prevented if the maternal infection is recognized and treated; and

(B) Provide counseling and instruction for human immunodeficiency virus in a manner prescribed by the Division of Health of the Department of Health and Human Services based upon contemporary state and federal standards.

(b) For the purpose of this section, a standard serological test shall be a test for syphilis, human immunodeficiency virus, and hepatitis B, approved or authorized by the Centers for Disease Control and Prevention, and approved by the Director of the Division of Health of the Department of Health and Human Services and shall be made at the division's laboratory or at another laboratory approved to make such tests.

(c) All records, reports, data, or other information collected or maintained under this section that identifies or could be used to identify any individual patient, provider, or institution shall be confidential, shall not be subject to discovery pursuant to the Arkansas Rules of Civil Procedure or the Freedom of Information Act of 1967, § 25-19-101 et seq. However, this subsection shall not affect the reports required to be submitted to the division under other laws and rules and regulations.

History. Acts 1947, No. 71, §§ 1-3;
A.S.A. 1947, §§ 82-607 — 82-609; Acts
1997, No. 963, § 1.

20-16-508. Treatment of minors.

(a)(1) Consent to the provision of medical or surgical care or services by a hospital or public clinic or consent to the performance of medical or surgical care or services by a physician who is licensed to practice medicine in this state when the consent is executed by a minor who has

or believes himself or herself to have a venereal disease shall be valid and binding as if the minor had achieved his or her majority. Any consent shall not be subject to a later disaffirmance by reason of his or her minority.

(2) The consent of a spouse, parent, guardian, or any other person standing in a fiduciary capacity to the minor shall not be necessary in order to authorize hospital care or services or medical or surgical care or services to be provided to the minor by a physician licensed to practice medicine.

(b) Upon the advice and direction of a treating physician or in the case of a medical staff any one (1) of them, a physician or member of a medical staff may inform the spouse, parent, or guardian of any minor as to the treatment given or needed but shall not be obligated to do so. The information may be given to or withheld from the spouse, parent, or guardian without the consent and over the express objection of the minor.

History. Acts 1969, No. 100, §§ 1-3; A.S.A. 1947, §§ 82-629 — 82-631; Acts 1997, No. 208, § 20.

A.C.R.C. Notes. Acts 1997, No. 208, § 1, codified as § 22-4-408, provided: “Legislative intent and purpose. The General Assembly hereby acknowledges that many of the laws relating to individuals with disabilities are antiquated, function-

ally outmoded, derogatory, ambiguous or are inconsistent with more recently enacted provisions of the law. Consequently, it is the intent of the General Assembly and the purpose of this act to clarify the relevant chapters of Titles 1, 6, 9, 13, 14, 16, 17, 20, 22, 23, and 27 of the Arkansas Code Annotated of 1987.”

SUBCHAPTER 6 — ABORTION GENERALLY

SECTION.

20-16-601. Refusal to perform, participate, consent, or submit.

SECTION.

20-16-602. Right to view ultrasound image prior to abortion.

Cross References. Abortion, Ark. Const. Amend. 68.
Concealing birth, § 5-26-203.

Criminal abortion, § 5-61-101 et seq.
Registration and inspection of abortion clinics, § 20-9-302.

RESEARCH REFERENCES

Am. Jur. 1 Am. Jur. 2d, Abortion, § 1 et seq.
ALR. Medical malpractice in performance of legal abortion. 69 ALR 4th 875.

Wrongful conception or pregnancy. 89 ALR 4th 632.
C.J.S. 1 C.J.S., Abortion & B.C., § 1 et seq.

20-16-601. Refusal to perform, participate, consent, or submit.

(a) No person shall be required to perform or participate in medical procedures which result in the termination of pregnancy. The refusal of any person to perform or participate in these medical procedures shall

not be a basis for civil liability to any person nor a basis for any disciplinary or any other recriminatory action against him or her.

(b) No hospital, hospital director, or governing board shall be required to permit the termination of human pregnancies within its institution, and the refusal to permit the procedures shall not be grounds for civil liability to any person nor a basis for any disciplinary or other recriminatory action against it by the state or any person.

(c) The refusal of any person to submit to an abortion or to give consent for an abortion shall not be grounds for loss of any privileges or immunities to which the person would otherwise be entitled, nor shall submission to an abortion or the granting of consent for an abortion be a condition precedent to the receipt of any public benefits.

History. Acts 1969, No. 61, § 8; A.S.A. 1947, § 41-2560.

Publisher's Notes. Acts 1969, No. 61, §§ 1-7, were declared unconstitutional in

Smith v. Bentley, 493 F. Supp. 916 (E.D. Ark. 1980). However, the plaintiffs lacked standing to challenge this section.

RESEARCH REFERENCES

ALR. Validity of state "informed consent" statutes by which providers of abortions are required to provide patient seeking abortion with certain information. 119 ALR 5th 315.

UALR L.J. Legislative Survey, Health Law, 8 UALR L.J. 583.

CASE NOTES

Constitutionality.

Although physicians, who desired to render abortions without the restraints imposed by statute, had standing to challenge the constitutionality of § 5-61-102, they did not have standing to challenge the constitutionality of this section as this statute is not a penal statute but deals exclusively with immunity from civil lia-

bility or loss of public benefits and, thus, this section was severable from the provisions of other statutes challenged by the physicians. Smith v. Bentley, 493 F. Supp. 916 (E.D. Ark. 1980).

Cited: May v. State, 254 Ark. 194, 492 S.W.2d 888, cert. denied, 414 U.S. 1024, 94 S. Ct. 448, 38 L. Ed. 2d 315 (1973).

20-16-602. Right to view ultrasound image prior to abortion.

(a) All physicians who use ultrasound equipment in the performance of an abortion shall inform the woman that she has the right to view the ultrasound image of her unborn child before an abortion is performed.

(b)(1) The physician shall certify in writing that the woman was offered an opportunity to view the ultrasound image and shall obtain the woman's acceptance or rejection to view the image in writing.

(2) If the woman accepts the offer and requests to view the ultrasound image, she shall be allowed to view it.

(c) The physician's certification together with the woman's signed acceptance or rejection shall be placed in the woman's medical file in the physician's office and kept for three (3) years.

(d) Any physician who fails to inform the woman that she has the right to view the ultrasound image of her unborn child before an abortion is performed or fails to allow her to view the ultrasound image upon her request may be subject to disciplinary action by the Arkansas State Medical Board.

History. Acts 2003, No. 1189, §§ 1, 2.

RESEARCH REFERENCES

UALR L.J. Survey of Legislation, 2003 Arkansas General Assembly, Public Health and Welfare, Right to View Ultrasound Image, 26 UALR L.J. 465.

SUBCHAPTER 7 — ABORTION — VIABLE FETUS

SECTION.	SECTION.
20-16-701. Legislative intent — Construction.	20-16-705. Abortion of viable fetus prohibited — Exceptions.
20-16-702. Definitions.	20-16-706. Method or technique required.
20-16-703. Presumption of viability.	20-16-707. Attendance of additional physician required.
20-16-704. Penalty.	

RESEARCH REFERENCES

ALR. Judicial consent to minor’s abortion. 23 ALR 4th 1061.
Am. Jur. 1 Am. Jur. 2d, Abortion, § 1 et seq.
C.J.S. 1 C.J.S., Abortion & B.C., § 1 et seq.
UALR L.J. Legislative Survey, Health Law, 8 UALR L.J. 583.

20-16-701. Legislative intent — Construction.

- (a) It is the intention of the General Assembly to regulate abortions in a manner consistent with the decisions of the United States Supreme Court.
- (b) All provisions and all terms shall be construed so as to be consistent with those decisions.

History. Acts 1985, No. 268, § 7; A.S.A. 1947, § 41-2568.

20-16-702. Definitions.

As used in this subchapter:

- (1) “Abortion” means the intentional termination of the pregnancy of a mother with an intention other than to increase the probability of a live birth or to remove a dead or dying fetus;
- (2) “Physician” means any person licensed to practice medicine in this state; and
- (3) “Viable fetus” means a fetus which can live outside the womb.

History. Acts 1985, No. 268, § 1;
A.S.A. 1947, § 41-2562.

RESEARCH REFERENCES

Ark. L. Rev. Allowing Fetal Wrongful Whose Time Has Come?, 44 Ark. L. Rev. Death Actions in Arkansas: A Death 465.

20-16-703. Presumption of viability.

For the purpose of this subchapter, a fetus shall be presumed not to be viable prior to the end of the twenty-fifth week of the pregnancy.

History. Acts 1985, No. 268, § 5;
A.S.A. 1947, § 41-2566.

RESEARCH REFERENCES

Ark. L. Rev. Allowing Fetal Wrongful Whose Time Has Come?, 44 Ark. L. Rev. Death Actions in Arkansas: A Death 465.

20-16-704. Penalty.

(a) A violation of this subchapter shall be a Class A misdemeanor.

(b) Nothing in this subchapter shall be construed to allow the charging or conviction of a woman with any criminal offense in the death of her own unborn child in utero.

History. Acts 1985, No. 268, § 6;
A.S.A. 1947, § 41-2567; Acts 1999, No. 1273, § 6.

20-16-705. Abortion of viable fetus prohibited — Exceptions.

(a) No abortion of a viable fetus shall be performed unless necessary to preserve the life or health of the woman.

(b) Before a physician may perform an abortion upon a pregnant woman after such time as her fetus has become viable, the physician shall first certify in writing that the abortion is necessary to preserve the life or health of the woman and shall further certify in writing the medical indications for the abortion and the probable health consequences.

(c) This subchapter shall not prohibit the abortion of a viable fetus if the pregnancy is the result of rape or incest perpetrated on a minor.

History. Acts 1985, No. 268, § 2;
A.S.A. 1947, § 41-2563.

20-16-706. Method or technique required.

(a) Any physician who performs an abortion upon a woman carrying a viable fetus shall utilize the available method or technique of abortion most likely to preserve the life and health of the viable fetus.

(b) In cases in which the method or technique of abortion which would most likely preserve the life and health of the viable fetus would present a greater risk to the life and health of the woman than another available method or technique, the physician may utilize the other method or technique.

(c) In all cases in which the physician performs an abortion upon a viable fetus, the physician shall certify in writing the available method or techniques considered and the reasons for choosing the method or technique employed.

History. Acts 1985, No. 268, § 3;
A.S.A. 1947, § 41-2564.

20-16-707. Attendance of additional physician required.

(a) An abortion of a viable fetus shall be performed or induced only when there is in attendance a physician other than the physician performing or inducing the abortion who shall take control of and provide immediate medical care for a child born as a result of the abortion.

(b) During the performance of the abortion, the physician performing it and, subsequent to the abortion, the physician required by this section to be in attendance shall take all reasonable steps in keeping with good medical practice, consistent with the procedure used, to preserve the life and health of the viable fetus, provided that it does not pose an increased risk to the life or health of the woman.

History. Acts 1985, No. 268, § 4;
A.S.A. 1947, § 41-2565.

SUBCHAPTER 8 — ABORTION — PARENTAL NOTIFICATION

SECTION.	SECTION.
20-16-801. Consent required.	20-16-807. Legislative intent.
20-16-802. Definitions.	20-16-808. When consent of parent not required.
20-16-803. Manner of consent.	20-16-809. When consent is not required.
20-16-804. Judicial relief from requirement.	20-16-810. Additional information reported by abortion providers.
20-16-805. Limitations on requirement.	
20-16-806. Penalty.	

RESEARCH REFERENCES

UALR L.J. Survey, Family Law, 12
UALR L.J. 631.

20-16-801. Consent required.

Except as otherwise provided in §§ 20-16-804 and 20-16-805, no person may perform an abortion upon an unemancipated minor or upon

a woman for whom a guardian or custodian has been appointed because of a finding of incompetency unless the person or the person's agent first obtains the written consent of either parent or the legal guardian or custodian.

History. Acts 1989, No. 270, § 1; 2005, No. 537, § 1.

A.C.R.C. Notes. Acts 2005, No. 537, § 10, provided: "If any one (1) or more provision, section, subsection, subdivision, sentence, clause, phrase, or word in this act is temporarily or permanently restrained or enjoined by judicial order, the original provisions shall remain in

force as though the law was never amended. However, if the temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, this entire act shall have full force and effect."

Amendments. The 2005 amendment rewrote this section.

CASE NOTES

Cited: *Juvenile H. v. Crabtree*, 310 Ark. 208, 833 S.W.2d 766 (1992).

20-16-802. Definitions.

As used in this subchapter:

(1) "Abortion" means the intentional termination of the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth or to remove a dead or dying fetus;

(2) "Medical emergency" means a condition that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function;

(3) "Minor" means an individual under eighteen (18) years of age;

(4) "Parent" means:

(A) Either parent of the pregnant woman if they are both living;

(B) One (1) parent of the pregnant woman if only one (1) is living or if the second one cannot be located through reasonably diligent effort; or

(C) The court-appointed guardian or custodian if the pregnant woman has one; and

(5) "Unemancipated minor" means a minor who is under the care, custody, and control of her parent or parents.

History. Acts 1989, No. 270, § 1; 2005, No. 537, § 2.

A.C.R.C. Notes. Acts 2005, No. 537, § 10 provided: "If any one (1) or more provision, section, subsection, subdivision, sentence, clause, phrase, or word in this act is temporarily or permanently restrained or enjoined by judicial order, the original provisions shall remain in force as though the law was never

amended. However, if the temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, this entire act shall have full force and effect."

Amendments. The 2005 amendment inserted present (2) and redesignated the remaining subdivisions accordingly; and substituted "either parent" for "both parents" in present (4).

20-16-803. Manner of consent.

(a) The person who performs the abortion or his or her agent shall obtain or be provided with the written consent from either parent or legal guardian.

(b) The written consent shall include, but not be limited to, the following information:

(1) The name and birthdate of the minor or incompetent woman;

(2) The name of the parent or legal guardian; -

(3) A statement from the parent or legal guardian that he or she is aware that the minor desires an abortion and that he or she does consent to the abortion;

(4) The date; and

(5) The notarized signature of the parent or legal guardian.

(c) A notarized signature is not required if the person who performs the abortion or his or her agent witnesses the signature of the parent or legal guardian and signs the written consent as a witness.

(d) Prior to signing the written consent as a witness, the person who performs the abortion or his or her agent shall obtain from the parent or legal guardian positive proof of identification in the form of a valid photo identification card.

(e) A photocopy of the proof of identification and the written consent statement shall be maintained in the minor's or incompetent woman's medical records for a period of five (5) years from the date of the abortion.

History. Acts 1989, No. 270, § 1; 2005, No. 537, § 3.

A.C.R.C. Notes. Acts 2005, No. 537, § 10, provided: "If any one (1) or more provision, section, subsection, subdivision, sentence, clause, phrase, or word in this act is temporarily or permanently restrained or enjoined by judicial order, the original provisions shall remain in

force as though the law was never amended. However, if the temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, this entire act shall have full force and effect."

Amendments. The 2005 amendment rewrote this section.

20-16-804. Judicial relief from requirement.

Notwithstanding the provisions of §§ 20-16-801 and 20-16-803, if a pregnant minor or incompetent woman elects not to obtain the consent of one (1) or both parents or guardian or custodian, then:

(1)(A) Any judge of a circuit court, upon petition or motion and after an appropriate hearing, shall authorize a physician to perform the abortion if the judge determines that the pregnant minor or incompetent woman is mature and capable of giving informed consent to the proposed abortion.

(B) If the judge determines that the pregnant minor or incompetent woman is not mature or if the pregnant woman does not claim to be mature, the judge shall determine whether the performance of an abortion upon her without consent of her parents, guardian, or custodian would be in her best interests and shall authorize a

physician to perform the abortion without the consent if the judge concludes that the pregnant minor or incompetent woman's best interests would be served by such an action;

(2)(A) Such a pregnant minor or incompetent woman may participate in proceedings in the court on her own behalf. However, the court shall advise her that she has a right to court-appointed counsel and upon her request shall provide her with such counsel.

(B) The minor or incompetent person shall have the right to file her petition in the circuit court using a pseudonym or using solely her initials;

(3) Court proceedings under this section shall be confidential and shall ensure the anonymity of the minor or incompetent person. All court proceedings under this section shall be sealed, and all documents related to this petition shall be confidential and shall not be available to the public;

(4) These proceedings shall be given precedence over other pending matters to the extent necessary to ensure that the court reaches a decision promptly and without delay so as to serve the best interests of the pregnant minor or incompetent woman;

(5) The judge shall make in writing specific factual findings and legal conclusions supporting the decision and shall order a record of the evidence to be maintained, including the judge's own findings and conclusions;

(6)(A) An expedited confidential appeal shall be available to any such pregnant minor or incompetent woman for whom the court denies an order authorizing an abortion without consent.

(B) An order authorizing an abortion without consent shall not be subject to appeal; and

(7) No filing fees shall be required of any such pregnant minor or incompetent woman at either the trial or the appellate level.

History. Acts 1989, No. 270, § 1; 2005, No. 537, § 4.

A.C.R.C. Notes. Acts 2005, No. 537, § 10, provided: "If any one (1) or more provision, section, subsection, subdivision, sentence, clause, phrase, or word in this act is temporarily or permanently restrained or enjoined by judicial order, the original provisions shall remain in force as though the law was never amended. However, if the temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, this entire act shall have full force and effect."

Amendments. The 2005 amendment substituted "obtain the consent" for "allow the notification" in the introductory paragraph; substituted "circuit court" for "probate court" in (1)(A); substituted "if the judge" for "if said judge" in (1)(A) and twice in (1)(B); substituted "consent" for "notification" twice in (1)(B) and in present (6)(A); redesignated former (3) as present (3)-(5); redesignated former (4) and (5) as present (6) and (7); rewrote present (3); and inserted "These proceedings ... promptly" in present (4).

CASE NOTES

Cited: *Juvenile H. v. Crabtree*, 310 Ark. 208, 833 S.W.2d 766 (1992).

20-16-805. Limitations on requirement.

Consent shall not be required under this subchapter if:

(1) The attending physician certifies in the pregnant minor or incompetent woman's medical record that there is a medical emergency and there is insufficient time to obtain the required consent; or

(2) A judicial bypass is obtained under § 20-16-804.

History. Acts 1989, No. 270, § 1; 2005, No. 537, § 5.

A.C.R.C. Notes. Acts 2005, No. 537, § 10, provided: "If any one (1) or more provision, section, subsection, subdivision, sentence, clause, phrase, or word in this act is temporarily or permanently restrained or enjoined by judicial order, the original provisions shall remain in force as though the law was never amended. However, if the temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases

to have effect, this entire act shall have full force and effect."

Amendments. The 2005 amendment substituted "Consent" for "Notification" in the introductory sentence; substituted "there is a medical emergency and there is insufficient time to obtain the required consent; or" for "the abortion is necessary to prevent the woman's death and there is insufficient time to provide the required notice" in (1); rewrote (2); and deleted former (3).

20-16-806. Penalty.

(a) The performance of an abortion in violation of this subchapter shall be a Class A misdemeanor and shall be grounds for a civil action by a person whose consent is required.

(b) Nothing in this subchapter shall be construed to allow the charging or conviction of a woman with any criminal offense in the death of her own unborn child in utero.

History. Acts 1989, No. 270, § 1; 1999, No. 1273, § 7; 2005, No. 537, § 6.

A.C.R.C. Notes. Acts 2005, No. 537, § 10, provided: "If any one (1) or more provision, section, subsection, subdivision, sentence, clause, phrase, or word in this act is temporarily or permanently restrained or enjoined by judicial order, the original provisions shall remain in force as though the law was never

amended. However, if the temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, this entire act shall have full force and effect."

Amendments. The 2005 amendment substituted "whose consent is required" for "wrongfully denied notification" in (a); deleted former (b); and redesignated former (c) as present (b).

20-16-807. Legislative intent.

This subchapter is not intended to create and shall not be construed to create an affirmative right to legal abortion.

History. Acts 1989, No. 270, § 1.

20-16-808. When consent of parent not required.

Consent under this subchapter shall not be required to be obtained from a parent if:

- (1) Both of the parents' whereabouts are unknown; or
- (2)(A) If the minor has only one (1) living parent and the minor states by affidavit that the parent has committed incest with the minor, has raped the minor, or has otherwise sexually abused the minor.
- (B) The attending physician shall report the abuse as provided under §§ 12-12-504 and 12-12-507.

History. Acts 1989, No. 270, § 1; 2005, No. 537, § 7.

A.C.R.C. Notes. Acts 2005, No. 537, § 10, provided: "If any one (1) or more provision, section, subsection, subdivision, sentence, clause, phrase, or word in this act is temporarily or permanently restrained or enjoined by judicial order, the original provisions shall remain in

force as though the law was never amended. However, if the temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, this entire act shall have full force and effect."

Amendments. The 2005 amendment rewrote this section.

20-16-809. When consent is not required.

A minor shall not be required to obtain consent under this subchapter if the guardianship or custody order has expired or is otherwise no longer in effect.

History. Acts 2005, No. 537, § 8.

A.C.R.C. Notes. Acts 2005, No. 537, § 10, provided: "If any one (1) or more provision, section, subsection, subdivision, sentence, clause, phrase, or word in this act is temporarily or permanently restrained or enjoined by judicial order,

the original provisions shall remain in force as though the law was never amended. However, if the temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, this entire act shall have full force and effect."

20-16-810. Additional information reported by abortion providers.

(a) In addition to other information reported by an abortion provider to the Division of Health of the Department of Health and Human Services, the following information shall be reported for each induced termination of pregnancy:

- (1) Whether parental consent was required;
- (2) Whether parental consent was obtained; and
- (3) Whether a judicial bypass was obtained.

(b) The division shall revise its forms utilized by abortion providers to report an induced termination of pregnancy by including the reporting of information required by this section.

History. Acts 2005, No. 537, § 9.

A.C.R.C. Notes. Acts 2005, No. 537, § 10, provided: "If any one (1) or more provision, section, subsection, subdivi-

sion, sentence, clause, phrase, or word in this act is temporarily or permanently restrained or enjoined by judicial order, the original provisions shall remain in

force as though the law was never amended. However, if the temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, this entire act shall have full force and effect.”

Publisher’s Notes. For the repeal of former § 20-16-810, see note at § 27-16-810.

SUBCHAPTER 9 — WOMAN’S RIGHT TO KNOW ACT OF 2001

SECTION.

- 20-16-901. Title.
- 20-16-902. Definitions.
- 20-16-903. Informed consent.
- 20-16-904. Printed materials.
- 20-16-905. Procedure in case of medical emergency.

SECTION.

- 20-16-906. Regulations — Collection and reporting of information.
- 20-16-907. Penalties.
- 20-16-908. Woman’s anonymity.

Effective Dates. Acts 2001, No. 353, § 9: May 1, 2001. Emergency clause provided: “It is hereby found and determined by the Eighty-third General Assembly that the health of the women of Arkansas is in immediate jeopardy and that fetuses in Arkansas who might have been saved will be unnecessarily lost during any time the informational programs required under this act remain inoperative. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on May 1, 2001.”

Acts 2001, No. 1564, § 9: May 1, 2001. Emergency clause provided: “It is found and determined by the General Assembly that Act 353 of 2001 goes into effect on May 1, 2001; that this act makes technical corrections to that act; and that therefore this act must go into effect at the same time as Act 353 of 2001. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on May 1, 2001.”

20-16-901. Title.

This subchapter shall be known and may be cited as the “Woman’s Right to Know Act of 2001”.

History. Acts 2001, No. 353, § 1.

RESEARCH REFERENCES

UALR L.J. Survey of Legislation, 2001 Arkansas General Assembly, Public Health and Welfare, 24 UALR L.J. 557.

20-16-902. Definitions.

As used in this subchapter:

(1) “Abortion” means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a woman known to be pregnant, for a

purpose other than to increase the probability of a live birth, to preserve the life or health of the child after a live birth, or to remove a dead fetus;

(2) "Attempt to perform an abortion" means an act or an omission of a statutorily required act that under the circumstances as the actor believes them to be constitutes a substantial step in a course of conduct planned to culminate in the termination of a pregnancy in Arkansas;

(3) "Board" means the Arkansas State Medical Board or the appropriate health care professional licensing board;

(4) "Division" means the Division of Health of the Department of Health and Human Services;

(5) "Director" means the Director of the Division of Health of the Department of Health and Human Services;

(6) "Gestational age" means the age of the fetus as calculated from the first day of the last menstrual period of the pregnant woman;

(7) "Medical emergency" means any condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate termination of her pregnancy to avert her death or for which a delay will create serious risk of impairment of a major bodily function which is substantial and deemed to be irreversible;

(8) "Physician" means any person licensed to practice medicine in this state; and

(9) "Probable gestational age of the fetus" means what in the judgment of the physician will with reasonable probability be the gestational age of the fetus at the time the abortion is planned to be performed.

History. Acts 2001, No. 353, § 2; 2001, No. 1564, § 1.

20-16-903. Informed consent.

(a) No abortion shall be performed in this state except with the voluntary and informed consent of the woman upon whom the abortion is to be performed.

(b) Except in the case of a medical emergency, consent to an abortion is voluntary and informed only if:

(1) Prior to and in no event on the same day as the abortion, the woman is told the following, by telephone or in person, by the physician who is to perform the abortion, by a referring physician, or by an agent of either physician:

(A) The name of the physician who will perform the abortion;

(B) The medical risks associated with the particular abortion procedure to be employed;

(C) The probable gestational age of the fetus at the time the abortion is to be performed; and

(D) The medical risks associated with carrying the fetus to term;

(2)(A)(i) The information required by subdivision (b)(1) of this section may be provided by telephone without conducting a physical examination or tests of the woman.

(ii) If the information is supplied by telephone, the information may be based both on facts supplied to the physician or his or her agent by the woman and on whatever other relevant information is reasonably available to the physician or his or her agent.

(B) The information required by subdivision (b)(1) of this section may not be provided by a tape recording but shall be provided during a consultation in which the physician or his or her agent is able to ask questions of the woman and the woman is able to ask questions of the physician.

(C) If a physical examination, tests, or other new information subsequently indicates the need in the medical judgment of the physician for a revision of the information previously supplied to the woman, that revised information may be communicated to the woman at any time prior to the performance of the abortion.

(D) Nothing in this section may be construed to preclude provision of required information through a translator in a language understood by the woman;

(3) Prior to and in no event on the same day as the abortion, the woman is informed, by telephone or in person, by the physician who is to perform the abortion, by a referring physician, or by an agent of either physician:

(A) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;

(B) That the father is liable to assist in the support of her child, even in instances in which the father has offered to pay for the abortion;

(C) That she has the option to review the printed or electronic materials described in § 20-16-904 and that those materials:

(i) Have been provided by the State of Arkansas; and

(ii) Describe the fetus and list agencies that offer alternatives to abortion; and

(D) That if the woman chooses to exercise her option to view the materials:

(i) In a printed form, the materials shall be mailed to her by a method chosen by her; or

(ii) Via the internet, she shall be informed prior to and in no event on the same day as the abortion of the specific address of the website where the materials can be accessed;

(4) The information required by subdivision (b)(3) of this section may be provided by a tape recording if provision is made to record or otherwise register specifically whether the woman does or does not choose to review the printed materials;

(5) Prior to the termination of the pregnancy, the woman certifies in writing that the information described in subdivision (b)(1) of this section and her options described in subdivision (b)(3) of this section

have been furnished to her and that she has been informed of her option to review the information referred to in subdivision (b)(3)(C) of this section;

(6) Prior to the abortion, the physician who is to perform the procedure or the physician's agent receives a copy of the written certification prescribed by subdivision (b)(5) of this section; and

(7) Before the abortion procedure is performed, the physician shall confirm with the patient that she has received information regarding:

(A) The medical risks associated with the particular abortion procedure to be employed;

(B) The probable gestational age of the unborn child at the time the abortion is to be performed; and

(C) The medical risks associated with carrying the fetus to term.

(c) The Arkansas State Medical Board shall promulgate regulations to ensure that physicians who perform abortions, referring physicians, or agents of either physician comply with all the requirements of this section.

History. Acts 2001, No. 353, § 3; 2001, No. 1564, §§ 2-6.

RESEARCH REFERENCES

ALR. Validity of state "informed consent" statutes by which providers of abortions are required to provide patient seeking abortion with certain information. 119 ALR 5th 315.

20-16-904. Printed materials.

(a) The Division of Health of the Department of Health and Human Services shall cause to be published in English and in each language which is the primary language of two percent (2%) or more of the state's population and shall update on an annual basis the following printed materials in such a way as to ensure that the information is easily comprehensible:

(1) At the option of the division:

(A) Geographically indexed materials designed to inform the woman of public and private agencies, including adoption agencies, and services available to assist a woman through pregnancy, upon childbirth, and while the child is dependent, including:

(i) A comprehensive list of the agencies available;

(ii) A description of the services they offer; and

(iii) A description of the manner, including telephone numbers, in which they might be contacted; or

(B) Printed materials, including a toll-free telephone number which may be called twenty-four (24) hours per day to obtain orally a list and description of agencies in the locality of the caller and of the services they offer; and

(2)(A) Materials designed to inform the woman of the probable anatomical and physiological characteristics of the fetus at two-week

gestational increments from the time when a woman can be known to be pregnant to full term, including:

(i) Any relevant information on the possibility of the fetus' survival; and

(ii) Pictures or drawings representing the development of fetuses at two-week gestational increments, provided that the pictures or drawings shall describe the dimensions of the fetus and shall be realistic and appropriate for the stage of pregnancy depicted.

(B) The materials shall be objective, nonjudgmental, and designed to convey only accurate scientific information about the fetus at the various gestational ages.

(C) The material shall also contain objective information describing:

(i) The methods of termination of pregnancy procedures commonly employed;

(ii) The medical risks commonly associated with each of those procedures;

(iii) The possible detrimental psychological effects of termination of pregnancy; and

(iv) The medical risks commonly associated with carrying a child to term.

(b) The materials referred to in subsection (a) of this section shall be printed in a typeface large enough to be clearly legible.

(c) The materials required under this section shall be available at no cost from the division and shall be distributed upon request in appropriate numbers to any person, facility, or hospital.

(d)(1) The division shall develop and maintain a secure website to provide the information described under subsection (a) of this section.

(2) The website shall be maintained at a minimum resolution of 72 pixels per inch.

History. Acts 2001, No. 353, § 4.

"Within sixty (60) days after the effective date of this act".

A.C.R.C. Notes. As enacted by Acts 2001, No. 353, subsection (a) began:

20-16-905. Procedure in case of medical emergency.

When a medical emergency compels the performance of an abortion, the physician shall inform the woman, prior to the abortion if possible, of the medical indications supporting the physician's judgment that:

(1) An abortion is necessary to avert her death; or

(2) A delay will create a serious risk of impairment of a major bodily function which is substantial and deemed to be irreversible.

History. Acts 2001, No. 353, § 5.

20-16-906. Regulations — Collection and reporting of information.

(a) The Division of Health of the Department of Health and Human Services shall develop and promulgate regulations regarding reporting requirements.

(b) The Center for Health Statistics of the Division of Health of the Department of Health and Human Services shall ensure that all information collected by the center regarding abortions performed in this state shall be available to the public in printed form and on a twenty-four-hour basis on the center's website, provided that in no case shall the privacy of a patient or doctor be compromised.

(c) The information collected by the center regarding abortions performed in this state shall be continually updated.

(d)(1)(A) By June 3 of each year, the division shall issue a public report providing statistics on the number of women provided information and materials pursuant to this subchapter during the previous calendar year.

(B) Each report shall also provide the statistics for all previous calendar years, adjusted to reflect any additional information received after the deadline.

(2) The division shall take care to ensure that none of the information included in the public reports could reasonably lead to the identification of any individual who received information in accordance with § 20-16-903(1) or § 20-16-903(3).

History. Acts 2001, No. 353, § 6.

20-16-907. Penalties.

(a) A person who knowingly or recklessly performs or attempts to perform a termination of a pregnancy in violation of this subchapter shall be subject to disciplinary action by the Arkansas State Medical Board.

(b) No penalty may be assessed against the woman upon whom the abortion is performed or attempted to be performed.

(c) No penalty or civil liability may be assessed for failure to comply with any provision of § 20-16-903 unless the Division of Health of the Department of Health and Human Services has made the printed materials available at the time that the physician or the physician's agent is required to inform the woman of her right to review them.

History. Acts 2001, No. 353, § 7.

20-16-908. Woman's anonymity.

(a) In every proceeding or action brought under this subchapter, the court or board shall rule, upon motion or sua sponte, whether the identity of any woman upon whom a termination of pregnancy has been

performed or attempted shall be preserved from public disclosure if she does not give her consent to disclosure.

(b) If the court or board rules that the woman's anonymity should be preserved, the court or board shall order the parties, witnesses, and counsel to preserve her anonymity and shall direct the sealing of the record and the exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure.

(c) Each order to preserve the woman's anonymity shall be accompanied by specific written findings explaining:

(1) Why the anonymity of the woman should be preserved from public disclosure;

(2) Why the order is essential to that end;

(3) How the order is narrowly tailored to serve that interest; and

(4) Why no reasonable less restrictive alternative exists.

(d) This section shall not be construed to conceal the identity of the plaintiff or of witnesses from the defendant.

History. Acts 2001, No. 353, § 8; 2001, No. 1564, § 8.

SUBCHAPTER 10 — HUMAN CLONING

SECTION.

20-16-1001. Definitions.

20-16-1002. Prohibited acts — Penalties.

SECTION.

20-16-1003. Scientific research.

20-16-1004. No right of action.

20-16-1001. Definitions.

As used in this subchapter:

(1) "Asexual reproduction" means reproduction not initiated by the union of oocyte and sperm;

(2) "Embryo" means an organism of the species *homo sapiens* from the single cell stage to eight (8) weeks of development;

(3) "Fetus" means an organism of the species *homo sapiens* from eight (8) weeks of development until complete expulsion or extraction from a woman's body or removal from an artificial womb or other similar environment designed to nurture the development of the organism;

(4) "Human cloning" means human asexual reproduction, accomplished by introducing the genetic material from one (1) or more human somatic cells into a fertilized or unfertilized oocyte whose nuclear material has been removed or inactivated so as to produce a living organism, at any stage of development, that is genetically virtually identical to an existing or previously existing human organism;

(5) "Oocyte" means the human female germ cell, the egg; and

(6) "Somatic cell" means a diploid cell, having a complete cell of chromosomes, obtained or derived from a living or deceased human body at any stage of development.

History. Acts 2003, No. 607, § 1.

RESEARCH REFERENCES

UALR L.J. Survey of Legislation, 2003 Health and Welfare, Human Cloning, 26 Arkansas General Assembly, Public UALR L.J. 463.

20-16-1002. Prohibited acts — Penalties.

(a) It is unlawful for any person or entity, public or private, to intentionally or knowingly:

- (1) Perform or attempt to perform human cloning;
- (2) Participate in an attempt to perform human cloning;
- (3) Ship, transfer, or receive for any purpose an embryo produced by human cloning; or
- (4) Ship, transfer, or receive, in whole or in part, any oocyte, embryo, fetus, or human somatic cell for the purpose of human cloning.

(b) A violation of subdivision (a)(1) of this section or a violation of subdivision (a)(2) of this section, or both, is a Class C felony.

(c) A violation of subdivision (a)(3) of this section or a violation of subdivision (a)(4) of this section, or both, is a Class A misdemeanor.

(d)(1) In addition to any criminal penalty that may be levied, any person or entity that violates any provision of this section shall be subject to a fine of not less than two hundred fifty thousand dollars (\$250,000) or two (2) times the amount of any pecuniary gain that is received by the person or entity, whichever is greater.

(2) All fines collected shall be placed into the general revenues of the State of Arkansas.

History. Acts 2003, No. 607, § 1.

20-16-1003. Scientific research.

(a) This subchapter does not restrict areas of scientific research not specifically prohibited by this subchapter, including research into the use of nuclear transfer or other cloning techniques to produce molecules, deoxyribonucleic acid, cells other than human embryos, tissues, organs, plants, or animals other than humans.

(b) This subchapter does not apply to in vitro fertilization, the administration of fertility-enhancing drugs, or other medical procedures used to assist a woman in becoming or remaining pregnant so long as that procedure is not specifically intended to result in the gestation or birth of a child who is genetically identical to another conceptus, embryo, fetus, or human being, living or dead.

History. Acts 2003, No. 607, § 1.

20-16-1004. No right of action.

This subchapter does not create a private right of action.

History. Acts 2003, No. 607, § 1.

SUBCHAPTER 11 — UNBORN CHILD PAIN AWARENESS AND PREVENTION ACT

SECTION.	SECTION.
20-16-1101. Title.	20-16-1107. Procedure in case of medical emergency.
20-16-1102. Definitions.	20-16-1108. Reporting.
20-16-1103. Unborn child pain awareness information.	20-16-1109. Penalties.
20-16-1104. Unborn child pain prevention.	20-16-1110. Civil remedies.
20-16-1105. Printed information.	20-16-1111. Protection of privacy in court proceedings.
20-16-1106. Requirements for department website.	

20-16-1101. Title.

This subchapter shall be known and may be cited as the “Unborn Child Pain Awareness and Prevention Act”.

History. Acts 2005, No. 1696, § 1.

20-16-1102. Definitions.

As used in this subchapter:

(1)(A) “Abortion” means the use or prescription of any instrument, medicine, drug, or other substance or device intentionally to terminate the pregnancy of a female known to be pregnant.

(B) However, “abortion” does not include the termination of a pregnancy if the termination is intended to:

- (i) Increase the probability of a live birth;
- (ii) Preserve the life or health of the child after live birth; or
- (iii) Remove a dead fetus who died as the result of a spontaneous miscarriage;

(2) “Attempt to perform an abortion” means an act or an omission of a statutorily required act that under the circumstances as the actor believes them to be constitutes a substantial step in a course of conduct planned to culminate in the termination of a pregnancy in this state;

(3) “Gestational age” means the age of the unborn child as calculated from the first day of the last menstrual period of the pregnant woman;

(4) “Medical emergency” means any condition that on the basis of the physician’s good-faith clinical judgment so complicates the medical condition of a pregnant female that:

(A) The immediate abortion of her pregnancy is necessary to prevent her death; or

(B) A delay will create a serious risk of substantial and irreversible impairment of a major bodily function of the pregnant female;

(5) “Physician” means a person authorized or licensed to practice medicine under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., and a person authorized to practice osteopathy under § 17-91-101 et seq.;

(6) "Probable gestational age" means the age that with reasonable probability in the judgment of a physician will be the gestational age of the unborn child at the time the abortion is planned to be performed; and

(7) "Unborn child" means a member of the species *Homo sapiens* from fertilization until birth.

History. Acts 2005, No. 1696, § 1.

20-16-1103. Unborn child pain awareness information.

Except in the case of a medical emergency:

(1) At least twenty-four (24) hours before an abortion is performed on an unborn child whose probable gestational age is twenty (20) weeks or more, the physician performing the abortion or the physician's agent shall inform the pregnant female by telephone or in person:

(A) She has the right to review the printed materials described in § 20-16-1105;

(B) These materials are available on a state-sponsored website; and

(C) What the website address is;

(2) The physician or the physician's agent shall orally inform the pregnant female that:

(A) The materials have been provided by the State of Arkansas; and

(B) They contain information on pain in relation to the unborn child;

(3) If the pregnant female chooses to view the materials other than on the website, the materials shall either:

(A) Be given to her at least twenty-four (24) hours before the abortion; or

(B) Mailed to her at least seventy-two (72) hours before the abortion by certified mail, restricted delivery to addressee, so that the postal employee may deliver the mail only to the pregnant female;

(4) If provisions are made to record or otherwise register specifically whether the female does or does not choose to have the printed materials given or mailed to her, the information required by this section may be provided by a tape recording;

(5) The pregnant female shall certify in writing before the abortion that:

(A) The information described in subdivision (1) of this section has been furnished her; and

(B) She has been informed of her opportunity to review the printed materials described in § 20-16-1105; and

(6) Before the abortion is performed, the physician who is to perform the abortion or the physician's agent shall:

(A) Obtain a copy of the written certification required under subdivision (5) of this section; and

(B) Retain it on file with the female's medical record for at least three (3) years following the date of receipt.

History. Acts 2005, No. 1696, § 1.

“(A) Be given to her at least twenty (24) hours before the abortion; or”.

Publisher's Notes. As enacted by Acts 2005, No. 1696, subdivision (3)(A) read:

20-16-1104. Unborn child pain prevention.

(a) Except in the case of a medical emergency, before an abortion is performed on an unborn child whose gestational age is twenty (20) weeks or more, the physician performing the abortion or the physician's agent shall inform the pregnant female:

(1) Whether an anesthetic or analgesic would eliminate or alleviate organic pain to the unborn child that could be caused by the particular method of abortion to be employed; and

(2) Of the particular medical risks associated with the particular anesthetic or analgesic.

(b) After presenting the information required in subsection (a) of this section and with the consent of the pregnant female, the physician shall administer the anesthetic or analgesic.

History. Acts 2005, No. 1696, § 1.

20-16-1105. Printed information.

(a)(1)(A) The Division of Health of the Department of Health and Human Services shall publish in English and in each language that is the primary language of two percent (2%) or more of the state's population printed materials with the following statement concerning unborn children of twenty (20) weeks gestational age or more:

“By twenty (20) weeks gestation, the unborn child has the physical structures necessary to experience pain. There is evidence that by twenty (20) weeks gestation unborn children seek to evade certain stimuli in a manner that in an infant or an adult would be interpreted to be a response to pain. Anesthesia is routinely administered to unborn children who are twenty (20) weeks gestational age or more who undergo prenatal surgery.”

(B) The materials shall be objective, nonjudgmental, and designed to convey only accurate scientific information about the human fetus at the various gestational ages.

(2) The Department of Health and Human Services shall make the materials available on the department's website.

(3) The materials referred to in subdivision (a)(1) of this section shall be printed in a typeface large enough to be clearly legible.

(b)(1) The department's website shall be maintained at a minimum resolution of seventy-two (72) dots per inch.

(2) All pictures appearing on the website shall be a minimum of two hundred by three hundred (200 X 300) pixels.

(3) All letters on the website shall be presented in a minimum of 11-point type.

(4) All information and pictures shall be accessible with an industry-standard browser that requires no additional plug-ins.

(c) Upon request, the division shall make available to any person, facility, or hospital at no cost and in appropriate numbers the materials required under this section.

History. Acts 2005, No. 1696, § 1.

“Within ninety (90) days after the effective date of this subchapter.”

Publisher's Notes. As enacted by Acts 2005, No. 1696, subsection (a) began:

20-16-1106. Requirements for department website.

(a) The Department of Health and Human Services shall include on its website the information described in § 20-16-1105.

(b) No information regarding persons who use the website shall be collected or maintained.

(c) The department shall monitor the website on a daily basis to prevent and correct tampering.

History. Acts 2005, No. 1696, § 1.

20-16-1107. Procedure in case of medical emergency.

If a medical emergency compels a physician to perform an abortion, the physician shall inform the pregnant female before the abortion is performed, if possible, of the medical indications supporting the physician's judgment that:

- (1) An abortion is necessary to prevent her death; or
- (2) A twenty-four-hour delay will create a serious risk of substantial and irreversible impairment of a major bodily function of the pregnant female.

History. Acts 2005, No. 1696, § 1.

20-16-1108. Reporting.

(a) The Division of Health of the Department of Health and Human Services shall prepare a reporting form for physicians containing a reprint of this subchapter and listing:

- (1)(A) The number of females to whom the physician or an agent of the physician provided the information described in § 20-16-1103(1).
- (B) Of that number, the number provided by telephone and the number provided in person.
- (C) Of each of the numbers described in this subdivision (a)(1) and subdivision (a)(2) of this section, the number provided in the capacity of:
 - (i) A physician who is to perform the abortion; or
 - (ii) An agent of the physician;
- (2) The number of females who did not avail themselves of the opportunity to obtain a copy other than on the website of the printed information described in § 20-16-1105;
- (3) The number who, to the best of the reporting physician's information and belief, went on to obtain the abortion;

(4) The number of abortions performed by the physician for which information otherwise required to be provided at least twenty-four (24) hours before the abortion was not so provided because an immediate abortion was necessary to prevent the female's death; and

(5) The number of abortions for which information otherwise required to be provided at least twenty-four (24) hours before the abortion information was not so provided because a delay would create serious risk of substantial and irreversible impairment of a major bodily function of the pregnant female.

(b) The division shall ensure that copies of the reporting forms described in subsection (a) of this section are provided:

(1) Within one hundred twenty (120) days after August 12, 2005, to all physicians licensed to practice in this state;

(2) To each physician who subsequently becomes newly licensed to practice in this state, at the same time as official notification to that physician that the physician is so licensed; and

(3) By December 1 of each year after the calendar year in which this subchapter becomes effective, to all physicians licensed to practice in this state.

(c) By February 28 of each year following a calendar year in any part of which this subchapter was in effect, each physician who provided or whose agent provided information to one (1) or more females in accordance with § 20-16-1103 during the previous calendar year shall submit to the division a copy of the form described in subsection (a) of this section with the requested data entered accurately and completely.

(d)(1) For each of the items listed in subsection (a) of this section, the division shall issue by June 30 of each year a public report providing statistics compiled by the division on the basis of reports for the previous calendar year submitted in accordance with this section.

(2) Each report shall also provide the statistics for all previous calendar years, adjusted to reflect any additional information from late or corrected reports.

(3) The division shall ensure that none of the information included in the public reports could reasonably lead to the identification of any individual providing or provided information in accordance with § 20-16-1103(1) or § 20-16-1103(2).

(e) So long as reporting forms are sent to all licensed physicians in the state at least one (1) time every year and the report described in this section is issued at least one (1) time every year, the division, in order to achieve administrative convenience or fiscal savings, or to reduce the burden of reporting requirements, may:

(1) Alter any of the dates established in this section; or

(2) Consolidate the forms or reports described in this section with other forms or reports issued by the division.

(f)(1) The division shall assess against a physician who fails to submit a report required under this section within thirty (30) days after the due date a fee of five hundred dollars (\$500) for each additional thirty-day period or portion of a thirty-day period during which the report is overdue.

(2)(A) If a physician who is required to report under this section has not submitted a report or has submitted an incomplete report more than one (1) year following the due date of the report, the division may bring an action in a court of competent jurisdiction to seek an order requiring the physician to submit a complete report within a period established by the court.

(B) Failure of the physician to file the complete report within the court-ordered period is punishable as civil contempt.

History. Acts 2005, No. 1696, § 1.

Publisher's Notes. As enacted by Acts 2005, No. 1696, subsection (a) began: "Within ninety (90) days after the effective date of this subchapter,".

As to references in this section to the effective date of this subchapter, Acts 2005, No. 1696, became effective on August 12, 2005.

20-16-1109. Penalties.

(a) A person who knowingly or recklessly performs or attempts to perform a termination of a pregnancy in violation of this subchapter shall be subject to disciplinary action by the Arkansas State Medical Board.

(b) No penalty may be assessed against the woman upon whom the abortion is performed or attempted to be performed.

(c) No penalty or civil liability may be assessed for failure to comply with any provision of this subchapter unless the Division of Health of the Department of Health and Human Services has made the printed materials available at the time that the physician or the physician's agent is required to inform the woman of her right to review them.

History. Acts 2005, No. 1696, § 1.

20-16-1110. Civil remedies.

(a) An action seeking actual and punitive damages may be brought against a person who performed an abortion in knowing or reckless violation of this subchapter by:

(1) Any person upon whom the abortion was performed;

(2) The father of the unborn child who was the subject of the abortion; or

(3) A grandparent of the unborn child who was the subject of the abortion.

(b) Any female upon whom an abortion has been attempted in violation of this subchapter may bring an action for actual and punitive damages against a person who attempted to perform the abortion in knowing or reckless violation of this subchapter.

(c)(1) If the Division of Health of the Department of Health and Human Services fails to issue the public report required under § 20-16-1108, any group of ten (10) or more citizens of this state may seek an injunction in a court of competent jurisdiction against the Director of the Division of Health of the Department of Health and Human

Services requiring that a complete report be issued within a period established by the court.

(2) Failure of the director to obey an injunction issued under subdivision (c)(1) of this section is punishable as civil contempt.

(d)(1) If judgment is rendered in favor of the plaintiff in any action described in this section, the court shall assess a reasonable attorney's fee in favor of the plaintiff against the defendant.

(2) If judgment is rendered in favor of the defendant and if the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall assess a reasonable attorney's fee in favor of the defendant against the plaintiff.

History. Acts 2005, No. 1696, § 1.

20-16-1111. Protection of privacy in court proceedings.

(a) In every civil or criminal action brought under this subchapter in which any female upon whom an abortion has been performed or attempted has not given her consent to disclosure of her identity, the court shall determine whether the anonymity of the female shall be preserved from public disclosure.

(b)(1) The court, upon motion or sua sponte, shall make a ruling on preserving the anonymity of the female.

(2) If the court determines that the female's anonymity should be preserved, that court shall:

(A) Issue appropriate orders to the parties, witnesses, and counsel;

(B) Direct the sealing of the record; and

(C) Order the exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the anonymity of the female.

(3) Each order issued under subdivisions (b)(1) and (2) of this section shall be accompanied by specific written findings explaining:

(A) Why the anonymity of the female should be preserved from public disclosure;

(B) Why the order is essential to that end;

(C) Why no reasonable less restrictive alternative exists; and

(D) How the order is narrowly tailored to preserve the anonymity of the female.

(c) In the absence of written consent of the female upon whom an abortion has been performed or attempted, anyone other than a public official who brings an action under § 20-16-1110(a) shall do so under a pseudonym.

(d) This section may not be construed to conceal the identity of the plaintiff or witnesses from the defendant.

History. Acts 2005, No. 1696, § 1.

CHAPTER 17

DEATH AND DISPOSITION OF THE DEAD

SUBCHAPTER

1. GENERAL PROVISIONS.
2. ARKANSAS RIGHTS OF THE TERMINALLY ILL OR PERMANENTLY UNCONSCIOUS ACT.
3. POSTMORTEMS.
4. DONATION OF EYES.
5. ANATOMICAL GIFTS GENERALLY.
6. ARKANSAS ANATOMICAL GIFT ACT.
7. UNCLAIMED BODIES.
8. DISPOSITION OF HUMAN TISSUE.
9. CEMETERIES GENERALLY.
10. CEMETERY ACT FOR PERPETUALLY MAINTAINED CEMETERIES.
11. CEMETERY IMPROVEMENT DISTRICTS.

A.C.R.C. Notes. References to "this chapter" in § 20-17-501 and subchapters 1-4 and 6-11 may not apply to §§ 20-17-502 and 20-17-503, which were enacted subsequently.

Cross References. Vital Statistics, § 20-18-101 et seq.

RESEARCH REFERENCES

ALR. Tortious maintenance or removal of life supports. 58 ALR 4th 222.

Am. Jur. 22A Am. Jur. 2d, Death, § 441 et seq.

C.J.S. 77 C.J.S., Right to Die, § 1 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 20-17-101. Death — Legal definition.
20-17-102. Arkansas Final Disposition Rights Act.

SECTION.

- 20-17-103. Notification of death.

Cross References. Authorization for disposition of body, § 20-18-604.

Publisher's Notes. For Comments regarding the Uniform Determination of Death Act, see Commentaries Volume B.

Effective Dates. Acts 1979, No. 99, § 4: Feb. 11, 1979. Emergency clause provided: "It is hereby found and determined by the Seventy-second General Assembly that a definition of death is necessary to resolve complex medical, moral and legal questions. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preser-

vation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 386, § 4: Mar. 18, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that fifteen states and the District of Columbia have already adopted the definition of death contained in this Act; that Arkansas should join these states in the hope that ultimately the definition of death shall be uniform throughout the United States; and that the definition contained in Act 99 of 1979 is unduly

restrictive. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 376, § 7: Mar. 6, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly that current law provides for the giving of anatomical gifts upon death but otherwise nothing in the law provides a legal mechanism in which a person can indicate their wishes concerning the disposal of their remains upon death; that cremation has become an acceptable means of disposing of such re-

mains to some persons but there is a reluctance on the part of funeral planners and relatives to honor such option following the passing of the person; that this act will provide such funeral planners with a clear indication to be honored upon the death of the declarant; and that no guarantee exists that a person who would want to avail themselves of the provisions of this act will still be around on its effective date if it does not become effective immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

C.J.S. 25A C.J.S., Death, § 1.

20-17-101. Death — Legal definition.

(a) An individual is dead who has sustained either:

- (1) Irreversible cessation of circulatory and respiratory functions; or
- (2) Irreversible cessation of all functions of the entire brain, including the brain stem.

(b) A determination of death shall be made in accordance with accepted medical standards.

History. Acts 1979, No. 99, §§ 1, 2; 1985, No. 386, §§ 1, 2; A.S.A. 1947, §§ 82-537, 82-538.

RESEARCH REFERENCES

Ark. L. Rev. Carroll, Uniform Laws in Arkansas, 52 Ark. L. Rev. 313.

UALR L.J. Legislative Survey, Health Law, 8 UALR L.J. 583.

CASE NOTES

Proof.

This section, defining when one is legally dead and requiring that a determination of death shall be made in accordance with accepted medical standards,

does not require that proof of death for the purposes of criminal prosecution be made only by autopsy evidence or by specific medical opinion. *Wood v. State*, 20 Ark. App. 61, 724 S.W.2d 183 (1987).

20-17-102. Arkansas Final Disposition Rights Act.

(a)(1) This section may be cited as the "Arkansas Final Disposition Rights Act".

(2) For purposes of this section, “final disposition” means the burial, interment, cremation, removal from Arkansas, or other authorized disposition of a dead body or fetus.

(b)(1) An individual of sound mind and eighteen (18) or more years of age may execute at any time a declaration governing the final disposition of his or her bodily remains at his or her death, provided the disposition is in accordance with existing laws, rules, and practices for disposing of human remains.

(2) The declaration of final disposition executed under this section shall be signed by the declarant or another at the declarant’s direction and shall be witnessed by two (2) individuals.

(3) No additional consent of any other person is required if the declaration of final disposition contains a disposition authorized under this section and is otherwise valid under this section.

(c) No person having possession, charge, or control of the declarant’s human remains following the death of a person who has executed a declaration of final disposition shall knowingly dispose of the body in a manner inconsistent with the declaration.

(d)(1) Crematory operators shall not be liable for civil damages for cremating human remains if a declaration of final disposition indicating that the declarant wished to be cremated has been executed under this section.

(2) Crematory operators shall not be liable for civil damages for failing to cremate human remains if:

(A) The declarant executed a declaration of final disposition indicating that he or she did not wish to be cremated; or

(B) The crematory operator knows that there is a dispute as to the validity of the declaration of final disposition.

(e) If a decedent did not execute a declaration of final disposition, the person having lawful possession, charge, or control of the decedent’s human remains has the right to dispose of the remains in any manner that is consistent with existing laws, rules, and practices for disposing of human remains, including the right to have the remains cremated.

(f) A funeral home shall not be liable for any damages for carrying out the disposition of a decedent’s human remains in any lawful manner that is consistent with a decedent’s declaration of final disposition.

(g) Nothing in this section shall be construed to affect, repeal, or replace the provisions and procedures set forth in the Arkansas Anatomical Gift Act, § 20-17-601 et seq.

History. Acts 1991, No. 376, §§ 1-3; 2003, No. 666, § 1.

Amendments. The 2003 amendment redesignated former (a) as present (a)(1); added (a)(2); redesignated former (b) as present (b)(1) and (b)(2); in (b)(1), made gender neutral changes and substituted

“the disposition” for “such”; in (b)(2), inserted “of final...section”; added (b)(3); made minor stylistic changes in (c); redesignated former (d) as present (g); and added present (d) through (f).

Cross References. Final disposition of dead body or fetus, § 20-18-604.

RESEARCH REFERENCES

UALR L.J. Survey of Legislation, 2003 Health and Welfare, Cremation, 26 UALR Arkansas General Assembly, Public L.J. 464.

20-17-103. Notification of death.

Within thirty (30) calendar days after a death certificate is filed pursuant to § 20-18-601, the Division of Vital Records of the Division of Health of the Department of Health and Human Services shall provide notification of the death to the county and circuit court clerks in the county where the deceased was a resident.

History. Acts 1993, No. 133, § 1.

SUBCHAPTER 2 — ARKANSAS RIGHTS OF THE TERMINALLY ILL OR PERMANENTLY UNCONSCIOUS ACT

SECTION.

- 20-17-201. Definitions.
- 20-17-202. Declaration relating to use of life-sustaining treatment.
- 20-17-203. When declaration operative.
- 20-17-204. Revocation of declaration.
- 20-17-205. Recording determination of terminal condition or permanent unconsciousness and declaration.
- 20-17-206. Treatment of qualified patient.
- 20-17-207. Transfer of patients.
- 20-17-208. Immunities.
- 20-17-209. Penalties.

SECTION.

- 20-17-210. Miscellaneous provisions.
- 20-17-211. When health care provider may presume validity of declaration.
- 20-17-212. Recognition of declaration executed in another state.
- 20-17-213. Effect of previous declaration.
- 20-17-214. Who may execute written request for another.
- 20-17-215. Short title.
- 20-17-216. Severability.
- 20-17-217. Effective date.
- 20-17-218. Repeal.

Publisher's Notes. Former subchapter 2, concerning death with dignity, was repealed by Acts 1987, No. 713, § 18. The former subchapter was derived from the following sources:

- 20-17-201. Acts 1977, No. 879, § 1; A.S.A. 1947, § 82-3801.
- 20-17-202. Acts 1977, No. 879, §§ 2, 3; A.S.A. 1947, §§ 82-3802, 82-3803.

20-17-203. Acts 1977, No. 879, § 4; A.S.A. 1947, § 82-3804.

For Comments regarding the Uniform Rights of the Terminally Ill Act, see Commentaries Volume B.

Cross References. State hospice office, powers, and duties, § 20-7-117.

RESEARCH REFERENCES

ALR. Physician's withdrawal of life supports from comatose patient. 47 ALR 4th 18.

Extraordinary medical means: power of court to order or authorize discontinuation. 48 ALR 4th 67.

Living wills: Validity, construction, and effect. 49 ALR 4th 812.

Ark. L. Notes. Leflar, Withdrawal of Nutrition and Hydration From Dying and Vegetative Patients: A Statutory Analysis of Arkansas Law, 1993 Ark. L. Notes 79.

Leflar, Advance Health Care Directives Under Arkansas Law, 1994 Ark. L. Notes 37.

Ark. L. Rev. Chapman, Fateful Treat-

ment Choices for Critically Ill Adults, Part I: The Judicial Model, 37 Ark. L. Rev. 908.

Leflar, Liberty and Death: Advance Health Care Directives and the Law of Arkansas, 39 Ark. L. Rev. 375.

Chapman, The Uniform Rights of the Terminally Ill Act: Too Little, Too Late?, 42 Ark. L. Rev. 319.

UALR L.J. A Critical Analysis of the Arkansas Death with Dignity Act, Simpson and Armbrust, 1 UALR L.J. 473.

Survey-Probate, 10 UALR L.J. 599.

Survey, Constitutional Law, 13 UALR L.J. 331.

Notes, Constitutional Law — Right To Die — A State May Require Clear and Convincing Evidence of an Incompetent Patient's Desire to Die. *Cruzan v. Director, Missouri Department of Health*, 110 S. Ct. 2841 (1990), 13 UALR L.J. 559.

20-17-201. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Attending physician" means the physician who has primary responsibility for the treatment and care of the patient;

(2) "Declaration" means a writing executed in accordance with the requirements of § 20-17-202(a);

(3) "Health care proxy" is a person eighteen (18) years old or older appointed by the patient as attorney-in-fact to make health care decisions including the withholding or withdrawal of life-sustaining treatment if a qualified patient, in the opinion of the attending physician, is permanently unconscious, incompetent, or otherwise mentally or physically incapable of communication;

(4) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the law of this state to administer health care in the ordinary course of business or practice of a profession;

(5) "Life-sustaining treatment" means any medical procedure or intervention that, when administered to a qualified patient, will serve only to prolong the process of dying or to maintain the patient in a condition of permanent unconsciousness;

(6) "Permanently unconscious" means a lasting condition, indefinitely without change in which thought, feeling, sensations, and awareness of self and environment are absent;

(7) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity;

(8) "Physician" means an individual licensed to practice medicine in this state;

(9) "Qualified patient" means a patient eighteen (18) or more years of age who has executed a declaration or appointed a health care proxy and who has been determined to be in a terminal condition or in a permanently unconscious state by the attending physician and another qualified physician who has examined the patient;

(10) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; and

(11) "Terminal condition" means an incurable and irreversible condition that, without the administration of life-sustaining treatment,

will, in the opinion of the attending physician, result in death within a relatively short time.

History. Acts 1987, No. 713, § 1; 1999, No. 1536, § 1.

20-17-202. Declaration relating to use of life-sustaining treatment.

- (a) An individual of sound mind and eighteen (18) or more years of age may execute at any time a declaration governing the withholding or withdrawal of life-sustaining treatment. The declaration must be signed by the declarant, or another at the declarant's direction, and witnessed by two (2) individuals.
- (b) A declaration may be, but need not be, in the following form in the case where the patient has a terminal condition:

“DECLARATION

“If I should have an incurable or irreversible condition that will cause my death within a relatively short time, and I am no longer able to make decisions regarding my medical treatment, I direct my attending physician, pursuant to the Arkansas Rights of the Terminally Ill or Permanently Unconscious Act, to [withhold or withdraw treatment that only prolongs the process of dying and is not necessary to my comfort or to alleviate pain] [follow the instructions of whom I appoint as my Health Care Proxy to decide whether life-sustaining treatment should be withheld or withdrawn].
“It is my specific directive that nutrition may be withheld after consultation with my attending physician.
“It is my specific directive that hydration may be withheld after consultation with my attending physician.
“It is my specific directive that nutrition may not be withheld.
“It is my specific directive that hydration may not be withheld.
“Signed this day of, 20.....

“Signature
“Address

“The declarant voluntarily signed this writing in my presence.
“Witness
“Address
“Witness
“Address”

- (c) A declaration may be, but need not be, in the following form in the case where the patient is permanently unconscious:

“DECLARATION

“If I should become permanently unconscious, I direct my attending physician, pursuant to the Arkansas Rights of the

Terminally Ill or Permanently Unconscious Act, to [withhold or withdraw life-sustaining treatments that are no longer necessary to my comfort or to alleviate pain] [follow the instructions of whom I appoint as my health care proxy to decide whether life-sustaining treatment should be withheld or withdrawn].

“It is my specific directive that nutrition may be withheld after consultation with my attending physician.

“It is my specific directive that hydration may be withheld after consultation with my attending physician.

“It is my specific directive that nutrition may not be withheld.

“It is my specific directive that hydration may not be withheld.

“Signed this day of, 20

“Signature

“Address

“The declarant voluntarily signed this writing in my presence.

“Witness

“Address

“Witness

“Address

(d) A physician or other health care provider who is furnished a copy of the declaration shall make it a part of the declarant’s medical record and, if unwilling to comply with the declaration, promptly so advise the declarant.

(e) In the case of a qualified patient, the patient’s health care proxy, in consultation with the attending physician, shall have the authority to make treatment decisions for the patient including the withholding or withdrawal of life-sustaining procedures.

(f) A declaration executed by a qualified individual shall be clear and convincing evidence of his or her wishes, but clear and convincing evidence of an individual’s wishes is not limited to the declarations under this section.

(g)(1) The directives concerning nutrition and hydration contained in subsections (b) and (c) of this section shall apply only to declarations executed on and after July 16, 2003.

(2) All declarations executed before that date shall remain in full force and effect, and the provisions of subsections (b) and (c) of this section pertaining to hydration and nutrition shall not be applied in the interpretation or construction of any such declaration, nor shall they be applied to in any way invalidate any such declaration or to otherwise limit the directives, powers, and authority granted under any such declaration.

History. Acts 1987, No. 713, § 2; 1999, No. 1536, § 2; 2003, No. 1322, §§ 3, 4.

A.C.R.C. Notes. Acts 2003, No. 1322, § 6, provided: “Legislative purpose. (a)(1) The General Assembly recognizes that

residents of long-term care facilities are among the most vulnerable of the state’s citizens.

“(2) Further, the disproportionate number of these residents who are Medicaid

eligible, and who have little or no close family involvement in their lives, heightens their vulnerability.

“(b) It is the intent of the General Assembly that, to ensure proper care and treatment of these individuals, particu-

larly at end-of-life, the circumstances and conditions under which the withholding of nutrition, hydration, or both, may occur, be clarified.”

Amendments. The 2003 amendment rewrote (b) and (c); and added (f) and (g).

CASE NOTES

Purpose.

The provision stating that requests that the extraordinary measures to prolong life

be removed be in writing is for the protection of medical personnel. *Porter v. State*, 308 Ark. 137, 823 S.W.2d 846 (1992).

20-17-203. When declaration operative.

A declaration becomes operative when (i) it is communicated to the attending physician and (ii) the declarant is determined by the attending physician and another physician in consultation either to be in a terminal condition and no longer able to make decisions regarding administration of life-sustaining treatment or to be permanently unconscious. When the declaration becomes operative, the attending physician and other health care providers shall act in accordance with its provisions or comply with the transfer provisions of § 20-17-207.

History. Acts 1987, No. 713, § 3; 1999, No. 1536, § 3.

CASE NOTES

Cited: *Porter v. State*, 308 Ark. 137, 823 S.W.2d 846 (1992).

20-17-204. Revocation of declaration.

(a)(1) A declaration may be revoked at any time and in any manner by the declarant without regard to the declarant's mental or physical condition. A revocation is effective upon communication to the attending physician or other health care provider by the declarant or a witness to the revocation.

(2)(A) The wishes of a patient who requests nutrition or hydration, or both, shall be honored.

(B) Unless the use of artificial means is specifically requested, a patient's request for nutrition or hydration, or both, shall not be honored by use of artificial means if doing so would require the insertion of any apparatus into the patient's body.

(b) The attending physician or other health care provider shall make the revocation a part of the declarant's medical record.

History. Acts 1987, No. 713, § 4; 2003, No. 1322, § 5.

A.C.R.C. Notes. Acts 2003, No. 1322, § 6, provided: “Legislative purpose. (a)(1) The General Assembly recognizes that

residents of long-term care facilities are among the most vulnerable of the state's citizens.

“(2) Further, the disproportionate number of these residents who are Medicaid

eligible, and who have little or no close family involvement in their lives, heightens their vulnerability.

“(b) It is the intent of the General Assembly that, to ensure proper care and treatment of these individuals, particularly at end-of-life, the circumstances and

conditions under which the withholding of nutrition, hydration, or both, may occur, be clarified.”

Amendments. The 2003 amendment redesignated former (a) as present (a)(1); and added (a)(2).

20-17-205. Recording determination of terminal condition or permanent unconsciousness and declaration.

Upon determining that the declarant is in a terminal condition or permanently unconscious, the attending physician who knows of a declaration shall record the determination and the terms of the declaration in the declarant’s medical record.

History. Acts 1987, No. 713, § 5; 1999, No. 1536, § 4.

20-17-206. Treatment of qualified patient.

(a) A qualified patient may make decisions regarding life-sustaining treatment as long as the patient is able to do so.

(b) This subchapter does not affect the responsibility of the attending physician or other health care provider to provide treatment, including nutrition or hydration, or both, for a patient’s comfort or alleviation of pain.

(c) The declaration of a qualified patient known to the attending physician to be pregnant must not be given effect as long as it is possible that the fetus could develop to the point of live birth with continued application of life-sustaining treatment.

History. Acts 1987, No. 713, § 6; 2003, No. 1322, § 8.

A.C.R.C. Notes. Acts 2003, No. 1322, § 6, provided: “Legislative purpose. (a)(1) The General Assembly recognizes that residents of long-term care facilities are among the most vulnerable of the state’s citizens.

“(2) Further, the disproportionate number of these residents who are Medicaid eligible, and who have little or no close family involvement in their lives, heightens their vulnerability.

“(b) It is the intent of the General Assembly that, to ensure proper care and treatment of these individuals, particularly at end-of-life, the circumstances and conditions under which the withholding of nutrition, hydration, or both, may occur, be clarified.”

Amendments. The 2003 amendment substituted “nutrition or hydration, or both, for a patient’s comfort” for “nutrition and hydration, for a patient’s comfort, care” in (b).

20-17-207. Transfer of patients.

An attending physician or other health care provider who is unwilling to comply with this subchapter shall as promptly as practicable take all reasonable steps to transfer care of the declarant to another physician or health care provider.

History. Acts 1987, No. 713, § 7.

20-17-208. Immunities.

(a) In the absence of knowledge of the revocation of a declaration, a person is not subject to civil or criminal liability or discipline for unprofessional conduct for carrying out the declaration pursuant to the requirements of this subchapter.

(b) A physician or other health care provider, whose actions under this subchapter are in accord with reasonable medical standards, is not subject to criminal or civil liability or discipline for unprofessional conduct with respect to those actions.

History. Acts 1987, No. 713, § 8.

20-17-209. Penalties.

(a) A physician or other health care provider who willfully fails to transfer in accordance with § 20-17-207 is guilty of a Class A misdemeanor.

(b) A physician who willfully fails to record the determination of terminal condition or permanent unconsciousness in accordance with § 20-17-205 is guilty of a Class A misdemeanor.

(c) An individual who willfully conceals, cancels, defaces, or obliterates the declaration of another without the declarant's consent or who falsifies or forges a revocation of the declaration of another is guilty of a Class A misdemeanor.

(d) An individual who falsifies or forges the declaration of another, or willfully conceals or withholds personal knowledge of a revocation as provided in § 20-17-204, is guilty of a Class D felony.

(e) An individual who requires or prohibits the execution of a declaration as a condition for being insured for, or receiving, health care services is guilty of a Class D felony.

(f) A person who coerces or fraudulently induces another to execute a declaration under this subchapter is guilty of a Class D felony.

(g) The sanctions provided in this section do not displace any sanction applicable under other law.

History. Acts 1987, No. 713, § 9; 1999, No. 1536, § 5.

Cross References. Sentences for misdemeanors and felonies, § 5-4-401.

20-17-210. Miscellaneous provisions.

(a) Death resulting from the withholding or withdrawal of life-sustaining treatment pursuant to a declaration and in accordance with this subchapter does not constitute, for any purpose, a suicide or homicide.

(b) The making of a declaration pursuant to § 20-17-202 does not affect in any manner the sale, procurement, or issuance of any policy of life insurance or annuity, nor does it affect, impair, or modify the terms of an existing policy of life insurance or annuity. A policy of life insurance or annuity is not legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining treatment

from an insured qualified patient, notwithstanding any term to the contrary.

(c) A person may not prohibit or require the execution of a declaration as a condition for being insured for, or receiving, health care services.

(d) This subchapter creates no presumption concerning the intention of an individual who has revoked or has not executed a declaration with respect to the use, withholding, or withdrawal of life-sustaining treatment in the event of a terminal condition or permanent unconsciousness.

(e) This subchapter does not affect the right of a patient to make decisions regarding use of life-sustaining treatment, so long as the patient is able to do so, or impair or supersede any right or responsibility that a person has to effect the withholding or withdrawal of medical care.

(f) This subchapter does not require any physician or other health care provider to take any action contrary to reasonable medical standards.

(g) This subchapter does not condone, authorize, or approve mercy killing or euthanasia.

History. Acts 1987, No. 713, § 10;
1999, No. 1536, § 6.

20-17-211. When health care provider may presume validity of declaration.

In the absence of knowledge to the contrary, a physician or other health care provider may presume that a declaration complies with this subchapter and is valid.

History. Acts 1987, No. 713, § 11.

20-17-212. Recognition of declaration executed in another state.

A declaration executed in another state in compliance with the law of that state or of this state is validly executed for purposes of this subchapter.

History. Acts 1987, No. 713, § 12.

20-17-213. Effect of previous declaration.

An instrument executed before July 20, 1987, which substantially complies with § 20-17-202(a) must be given effect pursuant to the provision of this subchapter.

History. Acts 1987, No. 713, § 13.

A.C.R.C. Notes. As to the July 20, 1987, effective date inserted in this sec-

tion by the Arkansas Code Revision Commission, see note to § 20-17-217.

20-17-214. Who may execute written request for another.

(a) If any person is a minor or an adult where a valid declaration does not exist and a health care proxy has not been designated and who, in the opinion of the attending physician, is no longer able to make health care decisions, then the declaration may be executed in the same form on his or her behalf by the first of the following individuals or category of individuals who exist and are reasonably available for consultation:

- (1) A legal guardian of the patient, if one has been appointed;
- (2) In the case of an unmarried patient under the age of eighteen (18), the parents of the patient;
- (3) The patient's spouse;
- (4) The patient's adult child or, if there is more than one (1), then a majority of the patient's adult children participating in the decision;
- (5) The parents of a patient over the age of eighteen (18);
- (6) The patient's adult sibling or, if there is more than one (1), then a majority of the patient's adult siblings participating in the decision;
- (7) Persons standing in loco parentis to the patient; or
- (8) A majority of the patient's adult heirs at law who participate in the decision.

(b)(1) Even if an advance directive that includes a directive to withhold nutrition or hydration, or both, is signed by a person under this section, if the terminally ill patient requests nutrition or hydration, his or her wishes shall be honored.

(2) Unless the use of artificial means is specifically requested, a patient's request for nutrition or hydration, or both, shall not be honored by use of artificial means if doing so would require the insertion of any apparatus into the patient's body.

History. Acts 1987, No. 713, § 14; 2003, No. 1322, § 9.

A.C.R.C. Notes. Acts 2003, No. 1322, § 6, provided: "Legislative purpose. (a)(1) The General Assembly recognizes that residents of long-term care facilities are among the most vulnerable of the state's citizens.

"(2) Further, the disproportionate number of these residents who are Medicaid eligible, and who have little or no close family involvement in their lives, heightens their vulnerability.

"(b) It is the intent of the General As-

sembly that, to ensure proper care and treatment of these individuals, particularly at end-of-life, the circumstances and conditions under which the withholding of nutrition, hydration, or both, may occur, be clarified."

Publisher's Notes. Acts 1987, No. 713, § 14, did not enact § 14 of the Uniform Rights of the Terminally Ill Act; section 14 of the uniform act provides for uniformity of construction and application.

Amendments. The 2003 amendment added (b); and made stylistic changes in (a).

20-17-215. Short title.

This subchapter may be cited as the "Arkansas Rights of the Terminally Ill or Permanently Unconscious Act".

History. Acts 1987, No. 713, § 15.

20-17-216. Severability.

If any provision of this subchapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this subchapter which can be given effect without the invalid provision or application, and to this end, the provisions of this subchapter are severable.

History. Acts 1987, No. 713, § 16.

20-17-217. Effective date.

This subchapter takes effect on July 20, 1987.

History. Acts 1987, No. 713, § 17.

A.C.R.C. Notes. As enacted, this section provided for an effective date of July 1, 1987. However, since the act contained no emergency clause, such effective date would be invalid under Arkansas case law (see *Arkansas Tax Comm'n v. Moore*, 103

Ark. 48, 145 S.W.2d 199 (1912) and related cases). Consequently, the general effective date for 1987 legislation was substituted in this section by the Arkansas Code Revision Commission pursuant to its authority under § 1-2-303.

20-17-218. Repeal.

The following acts and parts of acts are repealed:

- (1) Acts 1977, No. 879; and
- (2) All laws and parts of laws in conflict with this subchapter.

History. Acts 1987, No. 713, § 18.

SUBCHAPTER 3 — POSTMORTEMS**SECTION.**

20-17-301. Subchapter cumulative.

20-17-302. Consent.

SECTION.

20-17-303. Disposition of body.

RESEARCH REFERENCES

ALR. Liability for wrongful autopsy. 18 ALR 4th 858.

Am. Jur. 22A Am. Jur. 2d, Dead Bodies, § 41 et seq.

C.J.S. 25A C.J.S., Dead Bodies, §§ 2, 3, 16-18.

20-17-301. Subchapter cumulative.

This subchapter is cumulative and does not alter or repeal any law or laws in effect prior to June 9, 1955.

History. Acts 1955, No. 172, § 3; A.S.A. 1947, § 82-407n.

RESEARCH REFERENCES

ALR. Civil liability in conjunction with autopsy. 97 ALR 5th 419.

20-17-302. Consent.

(a) Consent for a licensed physician to conduct a postmortem examination on the body of a deceased person shall be deemed sufficient when given by the deceased, if in writing, and signed and acknowledged prior to his or her death or when given by whichever one (1) of the following assumes custody of the body for purposes of burial:

- (1) Father;
- (2) Mother;
- (3) Husband;
- (4) Wife;
- (5) Child;
- (6) Guardian;
- (7) Next of kin; or

(8) In the absence of any of the persons listed in subdivisions (a)(1)-(7) of this section, a friend or a person charged by law with the responsibility for burial.

(b) If two (2) or more such persons assume custody of the body, consent of one (1) of them shall be deemed sufficient.

History. Acts 1955, No. 172, § 1;
A.S.A. 1947, § 82-406.

CASE NOTES

Cited: *Neff v. St. Paul Fire & Marine Ins. Co.*, 304 Ark. 18, 799 S.W.2d 795 (1990).

20-17-303. Disposition of body.

After the examination has been completed, the dead body shall be delivered to the relatives or friends of the deceased person for burial.

History. Acts 1955, No. 172, § 2;
A.S.A. 1947, § 82-407.

SUBCHAPTER 4 — DONATION OF EYES

SECTION.

20-17-401 — 20-17-405. [Repealed.]

20-17-401 — 20-17-405. [Repealed.]

Publisher's Notes. This subchapter, concerning donation of eyes, was repealed by Acts 1989, No. 436, § 16. The subchapter was derived from the following sources:

- 20-17-401. Acts 1961, No. 90, § 1; A.S.A. 1947, § 82-410.1.
- 20-17-402. Acts 1961, No. 90, § 2; A.S.A. 1947, § 82-410.2.

20-17-403. Acts 1961, No. 90, § 3; A.S.A. 1947, § 82-410.3.

20-17-404. Acts 1961, No. 90, § 3; A.S.A. 1947, § 82-410.3.

20-17-405. Acts 1961, No. 90, § 3; A.S.A. 1947, § 82-410.3.

SUBCHAPTER 5 — ANATOMICAL GIFTS GENERALLY

SECTION.

20-17-501. Organ donation — Driver's license form to contain statement of intent.

20-17-502. Organ Donor Awareness Education Trust Fund.

SECTION.

20-17-503. Informational or educational booklets.

RESEARCH REFERENCES

Am. Jur. 22A Am. Jur. 2d, Dead Bodies, § 86 et seq.

ALR. Validity and construction of stat-

utes authorizing removal of body parts for transplant. 54 ALR 4th 1214.

C.J.S. 25A C.J.S., Dead Bodies, §§ 2, 3.

20-17-501. Organ donation — Driver's license form to contain statement of intent.

(a)(1) At the time that a person applies for the issuance or renewal of a driver's license, a question as to whether he or she wishes to donate his or her bodily organs shall be set out in the application, and the response shall be noted on the driver's license, clearly indicating the licensee's intent either to donate or not to donate his or her bodily organs.

(2) If the applicant decides to donate his or her bodily organs, and if it is so noted on the driver's license, all of the legal requirements for consenting to the donation of organs and tissues shall be deemed to have been met.

(3) If the applicant does not respond to the question regarding the donation of his or her bodily organs, then the applicant is deemed not to have given consent for the donation of bodily organs.

(b) Notwithstanding that a driver has given consent on his or her driver's license that he or she is willing to make an anatomical gift, that person's organs and tissue shall not be donated under this section if a family member or guardian identified in § 20-17-603(a) notifies the person or persons responsible for procuring the organs and tissue that the family member or guardian desires that the organs and tissue not be donated.

History. Acts 1993, No. 409, §§ 1, 2.

A.C.R.C. Notes. Acts 1993, No. 409, § 1, provided, in part, that: "Beginning as soon as practical, but no later than February 1, 1994, the Department of Finance and Administration shall redesign all driver's license forms to contain a statement of intent by the licensee regarding the licensee's consent for organ and tissue donation."

Former § 20-17-501, concerning the authorization of an anatomical gift by execution of a statement on the driver's license, was repealed by Acts 1989, No. 436, § 16. The former section was derived from Acts 1973, No. 146, § 1; A.S.A. 1947, § 82-410.14.

Cross References. Issuance of operator's and chauffeur's licenses generally, § 27-16-801.

20-17-502. Organ Donor Awareness Education Trust Fund.

(a) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a trust fund to be known as the "Organ Donor Awareness Education Trust Fund".

(b) The fund shall consist of all moneys donated or collected for the purpose of educating or informing the public of the need for organ donations, all interest earned from the investment of fund balances, and any remaining fund balances carried forward from year to year.

(c) The Director of the Department of Finance and Administration may accept any gifts, grants, bequests, devises, and donations made to the State of Arkansas for the purposes of organ donor awareness education. Moneys received for the purposes stated in this section shall be deposited into the fund.

(d) The Department of Finance and Administration shall administer the fund.

(e) The director shall grant funds available and appropriated from the fund to the Arkansas Regional Organ Recovery Agency or its successor agency to be used for educational or informational materials and other related costs associated with informing or educating the public about organ donations and organ donation awareness.

(f) The agency or its successor agency shall annually provide to the Chief Fiscal Officer of the State documentation evidencing that granted funds have been used in accordance with the purposes of this act.

History. Acts 2003, No. 1362, § 1.

A.C.R.C. Notes. References to "this chapter" in § 20-17-501 and subchapters 1-4 and 6-11 may not apply to this section, which was enacted subsequently.

Publisher's Notes. Former § 20-17-502, concerning hospital policies on re-

quests for donations, was repealed by Acts 1989, No. 436, § 16. The former section was derived from Acts 1987, No. 78, § 1.

Meaning of "this act". Acts 2003, No. 1362, codified as §§ 20-17-502, 20-17-503, 20-16-810, 26-51-451, 26-51-452, 27-13-104, and 27-15-4401 et seq.

20-17-503. Informational or educational booklets.

(a) If booklets or other information sources on the importance of organ donations are provided through the grant program established under § 20-17-502, the Revenue Division of the Department of Finance and Administration shall make the materials available to the public through the various offices of the division.

(b) The booklets or other information sources shall be approved by the Division of Health of the Department of Health and Human Services.

History. Acts 2003, No. 1362, § 4.

A.C.R.C. Notes. References to "this chapter" in § 20-17-501 and subchapters 1-4 and 6-11 may not apply to this section, which was enacted subsequently.

Acts 2003, No. 1362, contained two (2) sections designated as "Section 4," which have been merged by the Arkansas Code Revision Commission.

SUBCHAPTER 6 — ARKANSAS ANATOMICAL GIFT ACT

SECTION.

- 20-17-601. Definitions.
- 20-17-602. Making, amending, revoking, and refusing to make anatomical gifts by individual.
- 20-17-603. Making, revoking, and objecting to anatomical gifts by others.
- 20-17-604. Authorization by coroner or hospital administrator.
- 20-17-605. Required request — Search and notification.
- 20-17-606. Persons who may become donees — Purposes for which anatomical gifts may be made.
- 20-17-607. Delivery of document of gift.
- 20-17-608. Rights and duties at death.

SECTION.

- 20-17-609. Coordination of procurement and use.
- 20-17-610. Sale or purchase of parts prohibited.
- 20-17-611. Examination — Autopsy — Liability.
- 20-17-612. Transitional provisions.
- 20-17-613. Uniformity of application and construction.
- 20-17-614. [Reserved.]
- 20-17-615. Short title.
- 20-17-616. [Reserved.]
- 20-17-617. Procurement of transplantable tissue — Coroners — Procurement agencies.
- 20-17-618. Organ donor registry.

Publisher's Notes. Former subchapter 6, the Uniform Anatomical Gift Act, was repealed by Acts 1989, No. 436, § 16. The former subchapter was derived from the following sources:

- 20-17-601. Acts 1969, No. 4, § 1; A.S.A. 1947, § 82-410.5.
- 20-17-602. Acts 1969, No. 4, § 2; A.S.A. 1947, § 82-410.6.
- 20-17-603. Acts 1969, No. 4, § 3; A.S.A. 1947, § 82-410.7.
- 20-17-604. Acts 1969, No. 4, § 4; A.S.A. 1947, § 82-410.8.
- 20-17-605. Acts 1969, No. 4, § 5; A.S.A. 1947, § 82-410.9.
- 20-17-606. Acts 1969, No. 4, § 6; A.S.A. 1947, § 82-410.10.
- 20-17-607. Acts 1969, No. 4, § 7; A.S.A. 1947, § 82-410.11.
- 20-17-608. Acts 1969, No. 4, § 8; A.S.A. 1947, § 82-410.12.
- 20-17-609. Acts 1969, No. 4, § 9; A.S.A. 1947, § 82-410.4.

20-17-610. Acts 1969, No. 4, § 10; A.S.A. 1947, § 82-410.13n.

20-17-611. Acts 1969, No. 4, § 11; A.S.A. 1947, § 82-410.13.

20-17-612. Acts 1969, No. 4, § 12; A.S.A. 1947, § 82-410.13n.

20-17-613. Acts 1969, No. 4, § 13; A.S.A. 1947, § 82-410.13n.

For Comments regarding the Uniform Anatomical Gift Act, see Commentaries Volume B.

Cross References. Transplantation of human anatomy, limitation on liability, § 20-9-801 et seq.

Drivers' licenses, § 27-16-801.

Effective Dates. Acts 1989, No. 436, § 17: Mar. 9, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that whereas, there is a critical shortage of organs to transplant, and whereas, this act is designed to make more organs available; then therefore this act should go into effect immediately. Therefore, an emer-

agency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall

be in full force and effect from and after its passage and approval."

CASE NOTES

Cited: Chatelain v. Kelley, 322 Ark. 517, 910 S.W.2d 215 (1995).

20-17-601. Definitions.

As used in this subchapter:

(1) "Anatomical gift" means a donation of all or part of a human body to take effect upon or after death;

(2) "Decedent" means a deceased individual and includes a stillborn infant or fetus;

(3) "Document of gift" means a card, a statement attached to or imprinted on a motor vehicle operator's or chauffeur's license, a will, or other writing used to make an anatomical gift;

(4) "Donor" means an individual who makes an anatomical gift of all or part of the individual's body;

(5) "Enucleator" means an individual who is certified by the Department of Ophthalmology of the University of Arkansas for Medical Sciences to remove or process eyes or parts of eyes;

(6) "Hospital" means a facility licensed, accredited, or approved as a hospital under the law of any state or a facility operated as a hospital by the United States Government, a state, or a subdivision of a state;

(7) "Part" means an organ, tissue, eye, bone, artery, blood, fluid, or other portion of a human body;

(8) "Person" means an individual, corporation, business trust, estate, trust, partnership, joint venture, association, government, governmental subdivision or agency, or any other legal or commercial entity;

(9) "Physician" or "surgeon" means an individual licensed or otherwise authorized to practice medicine and surgery or osteopathy and surgery under the laws of any state;

(10) "Procurement organization" means a person licensed, accredited, or approved under the laws of any state for procurement, distribution, or storage of human bodies or parts;

(11) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico;

(12) "Technician" means any person, who is not a physician or surgeon, who is acting under the direction or supervision of a physician, surgeon, or hospital to remove or process a part.

History. Acts 1989, No. 436, § 1.

RESEARCH REFERENCES

Ark. L. Rev. Carroll, Uniform Laws in Arkansas, 52 Ark. L. Rev. 313.

20-17-602. Making, amending, revoking, and refusing to make anatomical gifts by individual.

(a) An individual who is at least eighteen (18) years of age may:

(i) Make an anatomical gift for any of the purposes stated in § 20-17-606(a);

(ii) Limit an anatomical gift to one or more of those purposes; or

(iii) Refuse to make an anatomical gift.

(b) An anatomical gift may be made only by a document of gift signed by the donor. If the donor cannot sign, the document of gift must be signed by another individual and by two (2) witnesses, all of whom have signed at the direction and in the presence of the donor and of each other, and state that it has been so signed.

(c) If a document of gift is attached to or imprinted on a donor's motor vehicle operator's or chauffeur's license, the document of gift must comply with subsection (b) of this section. Revocation, suspension, expiration, or cancellation of the license does not invalidate the anatomical gift.

(d) A document of gift may designate a particular physician or surgeon to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the anatomical gift may employ or authorize any physician, surgeon, technician, or enucleator to carry out the appropriate procedures.

(e) An anatomical gift by will takes effect upon death of the testator, whether or not the will is probated. If, after death, the will is declared invalid for testamentary purposes, the validity of the anatomical gift is unaffected.

(f) A donor may amend or revoke an anatomical gift, not made by will, only by:

(1) A signed statement;

(2) An oral statement made in the presence of two (2) individuals;

(3) Any form of communication during a terminal illness or injury addressed to a physician or surgeon; or

(4) The delivery of a signed statement to a specified donee to whom a document of gift had been delivered.

(g) The donor of an anatomical gift made by will may amend or revoke the gift in the manner provided for amendment or revocation of wills, or as provided in subsection (f) of this section.

(h) An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of any person after the donor's death. However, if a person listed in § 20-17-603(a) knows of a contrary indication by the donor that the gift be

revoked and makes such indication known to a representative of the organ procurement agency created, organized, and existing under the laws of the State of Arkansas, then the gift will only be effective upon the consent of a person listed in § 20-17-603(a).

(i) An individual may refuse to make an anatomical gift of the individual’s body or part by:

- (i) Writing signed in the same manner as a document of gift;
- (ii) A statement attached to or imprinted on a donor’s motor vehicle operator’s or chauffeur’s license; or

(iii) Any other writing used to identify the individual as refusing to make an anatomical gift. During a terminal illness or injury, the refusal may be an oral statement or other form of communication.

(j) In the absence of contrary indications by the donor, an anatomical gift of a part is neither a refusal to give other parts nor a limitation on an anatomical gift under § 20-17-603 or on a removal or release of other parts under § 20-17-604.

(k) In the absence of contrary indications by the donor, a revocation or amendment of an anatomical gift is not a refusal to make another anatomical gift. If the donor intends a revocation to be a refusal to make an anatomical gift, the donor shall make the refusal pursuant to subsection (i) of this section.

(l) The Office of Driver Services shall provide on the reverse side of each operator’s or chauffeur’s license issued a statement whereby the owner of the license may certify his willingness to make an anatomical gift under this subchapter.

(m) A document of gift may, but is not required to be, in the following form:

ANATOMICAL GIFT BY A LIVING DONOR

Pursuant to the Anatomical Gift Act, § 20-17-601 et seq., upon my death, I hereby give (check boxes applicable):

- 1. ☐ Any needed organs, tissues, or parts;
- 2. ☐ The following organs, tissues, or parts only _____;
- 3. ☐ For the following purposes only _____

(transplant-therapy-research-education)

Date of Birth	Signature of Donor
Date Signed	Address of Donor

History. Acts 1989, No. 436, § 2; 1997, No. 75, § 2.

20-17-603. Making, revoking, and objecting to anatomical gifts by others.

(a) Any member of the following classes of persons, in the order or priority listed, may make an anatomical gift of all or a part of the

decedent's body for an authorized purpose, unless the decedent, at the time of death, has made an unrevoked refusal to make that anatomical gift:

- (1) The spouse of the decedent;
- (2) An adult son or daughter of the decedent;
- (3) Either parent of the decedent;
- (4) An adult brother or sister of the decedent;
- (5) A grandparent of the decedent; and
- (6) A guardian of the person of the decedent at the time of death.

(b) An anatomical gift may not be made by a person listed in subsection (a) of this section if:

(1) A person in a prior class is available at the time of death to make an anatomical gift;

(2) The person proposing to make an anatomical gift knows of a refusal or contrary indications by the decedent; or

(3) The person proposing to make an anatomical gift knows of an objection to making an anatomical gift by a member of the person's class or a prior class.

(c) An anatomical gift by a person authorized under subsection (a) of this section must be made by:

(1) A document of gift signed by the person;

(2) The person's telegraphic, recorded telephonic, or other recorded message; or

(3) A telephonic message witnessed by at least two (2) persons, in which case the witnesses shall document the telephonic message in writing.

(d) An anatomical gift by a person authorized under subsection (a) of this section may be revoked by any member of the same or a prior class if, before procedures have begun for the removal of a part from the body of the decedent, the physician, surgeon, technician, or enucleator removing the part knows of the revocation.

(e) A failure to make an anatomical gift under subsection (a) of this section is not an objection to the making of an anatomical gift.

History. Acts 1989, No. 436, § 3; 1999, No. 707, § 1.

CASE NOTES

Revocation of Gift.

Under subsection (d) of this section, there is no requirement that a doctor or hospital inquire as to the wishes of the other members of a class, only that other

members of a class have veto power if they notify the party holding the body. *Neff v. St. Paul Fire & Marine Ins. Co.*, 304 Ark. 18, 799 S.W.2d 795 (1990).

20-17-604. Authorization by coroner or hospital administrator.

(a) The coroner or hospital administrator may release and permit the removal of a part from a body within that coroner's or administrator's custody, for transplantation or therapy, if:

(1) The official or administrator has received a request for the part from a hospital, physician, surgeon, or procurement organization;

(2) The official or administrator has made a reasonable effort, taking into account the useful life of the part, to locate and examine the decedent's medical records and inform persons listed in § 20-17-603(a) of their option to make, or object to making, an anatomical gift;

(3) The official or administrator does not know of a refusal or contrary indication by the decedent or objection by a person having priority to act as listed in § 20-17-603(a);

(4) The removal will be by a physician, surgeon, or technician; but in the case of eyes, by one of them or by an enucleator;

(5) The removal will not interfere with any autopsy or investigation;

(6) The removal will be in accordance with accepted medical standards; and

(7) Cosmetic restoration will be done, if appropriate.

(b) A coroner or hospital administrator releasing and permitting the removal of a part shall maintain a permanent record of the name of the decedent, the person making the request, the date and purpose of the request, the part requested, and the person to whom it was released.

History. Acts 1989, No. 436, § 4.

20-17-605. Required request — Search and notification.

(a) If, at or near the time of death of a patient, there is no medical record that the patient has made or refused to make an anatomical gift, the hospital administrator or a representative designated by the administrator or the attending physician shall discuss the option to make or refuse to make an anatomical gift and request the making of an anatomical gift pursuant to § 20-17-603(a). The request must be made with reasonable discretion and sensitivity to the circumstances of the family. A request is not required if the gift is not suitable, based upon accepted medical standards, for a purpose specified in § 20-17-606. An entry must be made in the medical record of the patient, stating the name and affiliation of the individual making the request, and of the name, response, and relationship to the patient of the person to whom the request was made.

(b) The following persons shall make a reasonable search for a document of gift or other information identifying the bearer as a donor or as an individual who has refused to make an anatomical gift:

(1) A law enforcement officer, fireman, paramedic, or other emergency rescuer finding an individual who the searcher believes is dead or near death; and

(2) A hospital, upon the admission of an individual at or near the time of death, if there is not immediately available any other source of that information.

(c) If a document of gift or evidence of refusal to make an anatomical gift is located by the search required by subsection (b)(1) of this section, and the individual or body to whom it relates is taken to a hospital, the

hospital must be notified of the contents and the document or other evidence must be sent to the hospital.

(d) If, at or near the time of death of a patient, a hospital knows that an anatomical gift has been made pursuant to § 20-17-603(a) or a release and removal of a part has been permitted pursuant to § 20-17-604, or that a patient or an individual identified as in transit to the hospital is a donor, the hospital shall notify the donee if one is named and known to the hospital; if not, it shall notify an appropriate procurement organization. The hospital shall cooperate in the implementation of the anatomical gift or release and removal of a part.

(e) A person who fails to discharge the duties imposed by this section is not subject to criminal or civil liability but is subject to appropriate administrative sanctions.

History. Acts 1989, No. 436, § 5.

20-17-606. Persons who may become donees — Purposes for which anatomical gifts may be made.

(a) The following persons may become donees of anatomical gifts for the purposes stated:

(1) A hospital, physician, surgeon, or procurement organization, for transplantation, therapy, medical or dental education, research, or advancement of medical or dental science;

(2) An accredited medical or dental school, college, or university for education, research, or advancement of medical or dental science; or

(3) A designated individual for transplantation or therapy needed by that individual.

(b) An anatomical gift may be made to a designated donee or without designating a donee. If a donee is not designated or if the donee is not available or rejects the anatomical gift, the anatomical gift may be accepted by any hospital.

(c) If the donee knows of the decedent's refusal or contrary indications to make an anatomical gift or that an anatomical gift by a member of a class having priority to act is opposed by a member of the same class or a prior class under § 20-17-603(a), the donee may not accept the anatomical gift.

History. Acts 1989, No. 436, § 6.

20-17-607. Delivery of document of gift.

(a) Delivery of a document of gift during the donor's lifetime is not required for the validity of an anatomical gift.

(b) If an anatomical gift is made to a designated donee, the document of gift, or a copy, may be delivered to the donee to expedite the appropriate procedures after death. The document of gift, or a copy, may be deposited in any hospital, procurement organization, or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of an interested person, upon or after the

donor's death, the person in possession shall allow the interested person to examine or copy the document of gift.

History. Acts 1989, No. 436, § 7.

20-17-608. Rights and duties at death.

(a) Rights of a donee created by an anatomical gift are superior to rights of others except with respect to autopsies under § 20-17-611(b). A donee may accept or reject an anatomical gift. If a donee accepts an anatomical gift of an entire body, the donee, subject to the terms of the gift, may allow embalming and use of the body in funeral services. If the gift is a part of a body, the donee, upon the death of the donor and before embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the person under obligation to dispose of the body.

(b) The time of death must be determined by a physician or surgeon who attends the donor at death or, if none, the physician or surgeon who certifies the death. Neither the physician or surgeon who attends the donor at death nor the physician or surgeon who determines the time of death may participate in the procedures for removing or transplanting a part unless the document of gift designates a particular physician or surgeon pursuant to § 20-17-602(d).

(c) If there has been an anatomical gift, a physician, surgeon, or technician may remove any donated parts and an enucleator may remove any donated eyes or parts of eyes, after determination of death by a physician or surgeon.

History. Acts 1989, No. 436, § 8.

20-17-609. Coordination of procurement and use.

Each hospital in this state, after consultation with other hospitals and procurement organizations, shall establish agreements or affiliations for coordination of procurement and use of human bodies and parts.

History. Acts 1989, No. 436, § 9.

20-17-610. Sale or purchase of parts prohibited.

(a) A person may not knowingly, for valuable consideration, purchase or sell a part for transplantation or therapy, if removal of the part is intended to occur after the death of the decedent.

(b) Valuable consideration does not include reasonable payment for the removal, processing, disposal, preservation, quality control, storage, transportation, or implantation of a part.

(c) A person who violates this section is guilty of a Class C felony.

History. Acts 1989, No. 436, § 10.

20-17-611. Examination — Autopsy — Liability.

(a) An anatomical gift authorizes any reasonable examination necessary to assure medical acceptability of the gift for the purposes intended.

(b) The provisions of this subchapter are subject to the laws of this state governing autopsies.

(c) A hospital, physician, surgeon, coroner, hospital administrator, enucleator, technician, or other person, who acts in accordance with this subchapter or with the applicable anatomical gift law of another state or attempts in good faith to do so, is not liable for that act in a civil action or criminal proceeding.

(d) An individual who makes an anatomical gift pursuant to § 20-17-602 or § 20-17-603 and the individual's estate are not liable for any injury or damage that may result from the making or the use of the anatomical gift.

History. Acts 1989, No. 436, § 11.

20-17-612. Transitional provisions.

This subchapter applies to a document of gift, revocation, or refusal to make an anatomical gift signed by the donor or a person authorized to make or object to making an anatomical gift before, on, or after March 9, 1989.

History. Acts 1989, No. 436, § 12.

20-17-613. Uniformity of application and construction.

This subchapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this subchapter among states enacting it.

History. Acts 1989, No. 436, § 13.

20-17-614. [Reserved.]

A.C.R.C. Notes. Section 14 of the Uniform Anatomical Gift Act (1987) is the severability provision.

20-17-615. Short title.

This subchapter may be cited as the "Arkansas Anatomical Gift Act".

History. Acts 1989, No. 436, § 14.

20-17-616. [Reserved.]

A.C.R.C. Notes. Section 16 of the Uniform Anatomical Gift Act (1987) is the effective date provision. Acts 1989, No. 436, § 17 provided that this subchapter was effective March 9, 1989.

20-17-617. Procurement of transplantable tissue — Coroners — Procurement agencies.

- (a) The coroners and medical examiners of the counties of Arkansas shall make reasonable efforts to facilitate procurement of transplantable organs and tissues in coordination with organ recovery agencies.
- (b) All organs and tissue procured in Arkansas shall be offered first to Arkansas patients before consideration of out-of-state patients unless that would be in conflict with federally mandated guidelines.

History. Acts 1991, No. 1010, § 1; 1993, No. 409, § 4; 1997, No. 75, § 3.

20-17-618. Organ donor registry.

- (a)(1) The Office of Driver Services shall assist in establishing a registry of organ donors by providing information to an organ procurement agency created, organized, and existing under the laws of the State of Arkansas. The information shall list persons who have agreed to make an anatomical gift as indicated on their operator's or chauffeur's licenses.
- (2) The information shall include the person's name, address, sex, birth date, driver's license number, and any limitations on the purposes of the anatomical gift.
- (b)(1) Access to the registry maintained by the organ procurement agency shall be provided to all other organ procurement agencies licensed, accredited, and approved under Arkansas law.
- (2) Organ procurement agencies may release information from the registry to tissue banks that have written agreements with the organ procurement agency.
- (3) However, information obtained from the registry shall not be distributed further to any other person or entity.
- (c) Any person whose name has been placed on the organ donor registry may have his or her name deleted by filing the appropriate form with the office.

History. Acts 1997, No. 75, § 1.

SUBCHAPTER 7 — UNCLAIMED BODIES

SECTION.	SECTION.
20-17-701. Rights of coroner, justice of the peace, or courts unaffected.	20-17-703. Notice to Department of Anatomy of the University of Arkansas for Medical Sciences.
20-17-702. Search for next of kin.	

SECTION.

- 20-17-704. Delivery to University of Arkansas for Medical Sciences.
- 20-17-705. Wishes of deceased for disposition honored.
- 20-17-706. Cost of embalming and transportation.

SECTION.

- 20-17-707. Holding period for the University of Arkansas for Medical Sciences.
- 20-17-708. Disposition after use.
- 20-17-709. Records.
- 20-17-710. Nonliability.

Effective Dates. Acts 1959, No. 22, § 15; Feb. 9, 1959. Emergency clause provided: "It has been found and is declared by the General Assembly of Arkansas that the laws relating to preservation of unclaimed dead human bodies for the advancement or study of medical science are grossly inadequate; that, consequently, many such bodies are lost each year due to failure of immediate preservative action; that there is great need of cadavers for anatomical purposes; that the training of a sufficient number of physicians is hindered because of an inadequate supply of

such cadavers, to the detriment of the ill and injured of this State; that there is need of proper methods for preservation, claiming or disposing of unclaimed dead human bodies; that only this act can remedy the situation. Therefore, an emergency is declared to exist, and this act can remedy the situation. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

20-17-701. Rights of coroner, justice of the peace, or courts unaffected.

None of the provisions of this subchapter shall affect the right of a coroner or a justice of the peace to hold the dead body as described under § 20-17-703 for the purpose of investigating the cause of death, nor shall this subchapter affect the right of any court of competent jurisdiction from entering an order affecting the disposition of the body.

History. Acts 1959, No. 22, § 13; A.S.A. 1947, § 82-405.10.

20-17-702. Search for next of kin.

(a) The person who assumes original and lawful possession, charge, or control of any body as described in this subchapter shall conduct a diligent search for relatives or next of kin of the deceased, or that person shall request the county sheriff or such other person as may be required by law to conduct the search. The person conducting the search shall make every effort to find the spouse, if any, of the deceased. However, if the person conducting the search is not satisfied that the putative spouse is, in fact, a legal spouse, or it is determined that no spouse exists, then every effort shall be made to find the parents and siblings, if any, of the deceased.

(b) If the identity of the deceased is not known, the investigation shall include, but not be limited to, the taking of fingerprints and

sending the fingerprint records to the Federal Bureau of Investigation in Washington, D.C., for identification and filing.

History. Acts 1959, No. 22, § 5; A.S.A. 1947, § 82-405.3; Acts 1997, No. 404, § 1.

20-17-703. Notice to Department of Anatomy of the University of Arkansas for Medical Sciences.

(a) Any person in charge of a prison, morgue, hospital, funeral parlor, or mortuary, any person who is a public officer, agent, or employee of the state, any county, or municipality, and all persons coming into possession, charge, or control of any human body which is unclaimed for burial shall notify the head of the Department of Anatomy of the University of Arkansas for Medical Sciences, or his or her designate, as agent for the University of Arkansas for Medical Sciences, that the body, if unclaimed, is available for use in the advancement or study of medical science.

(b) For the purpose of notifying the University of Arkansas for Medical Sciences of its availability, an "unclaimed body" is defined as a human body in the possession, charge, or control of the persons named in subsection (a) of this section for a period not to exceed forty-eight (48) hours, during which time the right of any relative, next of kin, friend, any representative of a fraternal society of which the deceased was a member, or a representative of any charitable or religious group to claim the body for burial purposes is recognized.

History. Acts 1959, No. 22, § 1; A.S.A. 1947, § 82-404.

20-17-704. Delivery to University of Arkansas for Medical Sciences.

Upon expiration of the forty-eight (48) hours as provided in § 20-17-703, if the dead human body has not been claimed for burial, the person then having possession, charge, or control shall surrender or deliver the body to the University of Arkansas for Medical Sciences, if so requested by it.

History. Acts 1959, No. 22, § 2; A.S.A. 1947, § 82-405.

20-17-705. Wishes of deceased for disposition honored.

(a) No unclaimed dead human body shall be surrendered to the University of Arkansas for Medical Sciences under this subchapter if there is proof that the deceased has during his or her last illness expressed his or her desire to be buried or otherwise interred.

(b) Any adult may by will or otherwise donate his or her body to the University of Arkansas for Medical Sciences under the Arkansas Anatomical Gift Act, § 20-17-601 et seq.

History. Acts 1959, No. 22, § 7; A.S.A. 1947, § 82-405.5; Acts 1993, No. 403, § 13.

20-17-706. Cost of embalming and transportation.

(a) If the University of Arkansas for Medical Sciences determines that there is a need for the body, that the body is suitable for anatomical science or study, and that the body has not been embalmed, then the university, at its expense, shall immediately arrange for proper embalmment of the body by a licensed embalmer, either with the person having possession, charge, or control thereof if the person is a licensed embalmer or licensed funeral director or with any other licensed embalmer or licensed funeral director.

(b) If the body has been embalmed prior to the claim of the University of Arkansas for Medical Sciences, as is customary, or the body is embalmed by its direction according to the provisions of this subchapter, the University of Arkansas for Medical Sciences shall pay twenty-five dollars (\$25.00) as a reimbursement of embalming expenses and shall assume costs for transportation of the body when shipment is at its direction.

(c) Should the body be embalmed prior to legal claim, any person or organization asserting legal claim to the body within forty-eight (48) hours after death as provided in this subchapter shall assume responsibility for at least twenty-five dollars (\$25.00) of the cost thereof, together with reasonable costs for transportation of the body which may have been incurred.

(d) If the deceased had provided for the use of his or her body for medical science under the Arkansas Anatomical Gift Act, § 20-17-601 et seq., and provided funds in his or her estate for burial, the University of Arkansas for Medical Sciences shall be free of all claims for the expenses as ordinarily provided under subsections (a)-(c) of this section.

History. Acts 1959, No. 22, §§ 3, 14; A.S.A. 1947, §§ 82-405.1, 82-405.6; Acts 1993, No. 403, § 13.

20-17-707. Holding period for the University of Arkansas for Medical Sciences.

(a) The University of Arkansas for Medical Sciences shall cause any body accepted under this subchapter to be retained in a proper state of preservation for ninety (90) days after the date the body is received by it.

(b) During this time any relative, next of kin, friend, any representative of a fraternal society of which the deceased was a member or a representative of a charitable or religious group may claim the body for burial at his or her or its expense as stated in § 20-17-706(a)-(c).

(c) If a claim is made, the University of Arkansas for Medical Sciences shall be reimbursed by the claimant for the embalming fee and

transportation charges that have been incurred by it in favor of the body claimed.

(d) If the body is not claimed by any person or organization within ninety (90) days from the date of arrival at the University of Arkansas for Medical Sciences, then all right, title, and interest in the body shall be deemed to vest in the state for the benefit of the University of Arkansas for Medical Sciences, and any living relative, next of kin, friend, or organization shall be deemed to have consented irrevocably to use of the body for the advancement or study of medical science.

History. Acts 1959, No. 22, § 6; A.S.A. 1947, § 82-405.4.

20-17-708. Disposition after use.

(a) At any time when a body as described in this subchapter shall have been used and deemed of no further value to medical science or study, the University of Arkansas for Medical Sciences shall cause the body to be buried or otherwise disposed of according to law, or the remains may be claimed by a member of the family of the deceased for burial at his or her expense if the body had been willed to the University of Arkansas for Medical Sciences under provisions of Acts 1949, No. 283 [repealed].

(b) If the body as described in § 20-17-703 is deemed unsuitable for anatomical study or research, the person having possession, charge, or control of the body shall be notified, and the body shall then be disposed of in accordance with existing laws, rules, and practices for disposing of unclaimed bodies.

History. Acts 1959, No. 22, §§ 4, 8; A.S.A. 1947, §§ 82-405.2, 82-405.7.

20-17-709. Records.

The University of Arkansas for Medical Sciences shall cause a complete record to be kept of all bodies received under this subchapter, and the record shall be open to inspection by any municipal, county, or state officer.

History. Acts 1959, No. 22, § 9; A.S.A. 1947, § 82-405.8.

20-17-710. Nonliability.

No person shall be civilly liable for possessing, examining, dissecting, or handling in any lawful manner any cadaver under this subchapter.

History. Acts 1959, No. 22, § 10; A.S.A. 1947, § 82-405.9.

SUBCHAPTER 8 — DISPOSITION OF HUMAN TISSUE

SECTION.

20-17-801. Fetus and tissue generally.

20-17-802. Fetal remains resulting from abortion.

20-17-801. Fetus and tissue generally.

(a)(1) Any physician removing or otherwise acquiring any tissue of the human body may, in his or her discretion, after making or causing to be made such scientific examination of the tissue as he or she may deem appropriate or as may be required by law, custom, or rules and regulations of the hospital or other institution in which the tissue may have been removed or acquired, authorize disposition of the tissue by incineration, cremation, burial, or other sanitary method approved by the State Board of Health. The physician may authorize the disposition pursuant to this subsection unless he or she has been furnished, prior to removal or acquisition of the tissue or at any time prior to its disposal, a written request that the tissue shall be delivered to the patient or someone in his or her behalf or, if death has occurred, to the person claiming the dead body for burial or cremation.

(2) However, no tissue shall be delivered except as may be permitted by rules and regulations of the board.

(3) Any hospital or other institution acquiring possession of any tissue and not having written instructions to the contrary from the attending physician, the patient, or the person claiming a dead body for burial or cremation, or someone acting in their behalf, may immediately dispose of the tissue as provided for in this subsection.

(b)(1) No external member of the human body may be disposed of pursuant to subsection (a) of this section within forty-eight (48) hours of its removal or acquisition unless consent thereto is obtained in writing from the patient or the person authorizing the medical or surgical treatment of the patient, and no dead fetus shall be so disposed of within the same period of time unless consent thereto is obtained in writing from the mother of the dead fetus or the mother's spouse.

(2) For the purposes of this section, an external member of the human body is defined as an arm or one (1) or more joints thereof, a hand, a finger or one (1) or more joints thereof, a leg or one (1) or more joints thereof, a foot, a toe or one (1) or more joints thereof, an ear or the greater part thereof, or the nose or the greater part thereof.

(3) For the purposes of this section, a dead fetus is defined as a product of human conception exclusive of its placenta or connective tissue, which has suffered death prior to its complete expulsion or extraction from the mother as established by the fact that, after the expulsion or extraction the fetus does not breathe or show any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

(c) The board shall promulgate all reasonable and necessary rules and regulations to effectuate the provisions of this section.

History. Acts 1971, No. 538, §§ 1, 2;
A.S.A. 1947, §§ 82-434, 82-435.

CASE NOTES

ANALYSIS

Constitutionality.
Rights of kin.

Constitutionality.

Religious beliefs are accommodated by the provision which allows anyone claiming a body to also claim the body's organs if a written request is made; no religious test is required as a condition for retrieval of the organs and the statute is a reasonable limit on First Amendment rights. *Fuller v. Marx*, 724 F.2d 717 (8th Cir. 1984).

Where widow of inmate did not at any time make a written request for her husband's organs although she could have assured the return of the organs by complying with this section, failure of medical examiner to return the organs did not constitute an unconstitutional invasion of any property right. *Fuller v. Marx*, 724 F.2d 717 (8th Cir. 1984).

Rights of Kin.

Under Arkansas law, the next of kin does have a quasi-property right in a dead body. *Fuller v. Marx*, 724 F.2d 717 (8th Cir. 1984).

20-17-802. Fetal remains resulting from abortion.

(a) Any physician who performs an abortion shall ensure that the fetal remains and all parts thereof are disposed of in a fashion similar to that in which other tissue is disposed.

(b)(1) No person shall perform any biomedical or behavioral research on a fetus born alive as the result of a legal abortion unless the research is for the exclusive benefit of the fetus so born.

(2) No person shall perform any biomedical or behavioral research on any fetus born dead as the result of a legal abortion or on any fetal tissue produced by the abortion without permission of the mother.

(c) No person shall buy, sell, give, exchange, or barter or offer to buy, sell, give, exchange, or barter any fetus born dead as a result of a legal abortion or any organ, member, or tissue of fetal material resulting from a legal abortion.

(d) No person shall possess either a fetus born dead as a result of a legal abortion or any organ, member, or tissue of fetal material resulting from a legal abortion.

(e) This section shall not apply to:

(1) A physician performing a legal abortion or a pathologist performing a pathological examination as the result of a legal abortion and shall not apply to an employee, agent, or servant of such a physician or pathologist;

(2) The staff, faculty, students, or governing body of any institution of higher learning or institution of secondary education to the extent of courses of instruction taught and research conducted at the institutions;

(3) Licensed physicians or their employees, agents, and servants while in the conduct of medical research; or

(4) Any licensed physician when performing a standard autopsy examination.

(f) Any person violating this section shall be guilty of a Class A misdemeanor.

History. Acts 1983, No. 714, §§ 1-7; mination of pregnancy, § 20-18-603.
A.S.A. 1947, §§ 82-436 — 82-442. Regulation of abortions, § 5-61-101.
Cross References. Registration of ter-

RESEARCH REFERENCES

UALR L.J. Legislative Survey, Health Law, 8 UALR L.J. 583.

SUBCHAPTER 9 — CEMETERIES GENERALLY

SECTION.
20-17-901. Registration required.
20-17-902. Burial in registered cemetery required — Records.
20-17-903. Application to locate or extend boundaries.
20-17-904. Perpetual care trust.
20-17-905. Abandonment.
20-17-906. Disposition of abandoned cemetery lots.
20-17-907. County abandoned cemetery registration boards.

SECTION.
20-17-908. Responsibilities of county abandoned cemetery registration boards.
20-17-909. Minimum maintenance for petitioned abandoned cemeteries.
20-17-910. Abandoned cemeteries on private property.
20-17-911. Minimum maintenance providers.

Cross References. Cemetery access roads, § 14-14-812.
Cemeteries — Access — Debris — Disturbance, § 5-39-212.
Preambles. Acts 1965, No. 445, contained a preamble which read: "Whereas, there are persons who desire to establish trust funds for the upkeep of burial grounds to which perpetual care is not available; and
"Whereas, a reasonable amount allocated to such a trust fund would assist in the preservation of burial grounds in this State;
"Now, therefore..."
Effective Dates. Acts 1929, No. 204, § 4: Jan. 1, 1930.
Acts 1939, No. 122, § 2: effective on passage.
Acts 1985, No. 597, § 3: Mar. 26, 1985.

Emergency clause provided: "It is hereby found and determined by the General Assembly that present law only allows a person to deposit two thousand five hundred dollars in trust for the perpetual care of a burial plot; this amount is no longer adequate to provide for the perpetual care of burial plots in many instances and therefore this Act is necessary to increase the amount authorized for deposit into a perpetual care trust; until this Act becomes effective the citizens of this State will be subject to the obsolete restrictions contained in the law amended hereby. Therefore, an emergency is hereby declared to exist and this Act being necessary for the perservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

ALR. Liability of cemetery in connection with conducting or supervising burial services. 42 ALR 4th 1059.

Liability for improper manner of reinterment of dead bodies. 53 ALR 4th 394.

Liability for desecration of graves and tombstones. 77 ALR 4th 108.

Am. Jur. 14 Am. Jur. 2d, Cemeteries, § 1 et seq.

C.J.S. 14 C.J.S., Cemeteries, § 1 et seq.

CASE NOTES

Applicability.

The provisions of this subchapter did not affect obligation of contract of ceme-

tery association incurred under trust commitments in 1922. *Page v. Harr*, 224 Ark. 961, 278 S.W.2d 121 (1955).

20-17-901. Registration required.

All cemeteries now existing in the state shall be registered with the county judge, if under his or her jurisdiction, or with the mayor, as the case may be, and a copy of the registration shall be filed with the Division of Health of the Department of Health and Human Services. This registration shall show the location and boundaries of the cemetery.

History. Acts 1929, No. 204, § 2; Pope's Dig., § 6447; Acts 1985, No. 1014, § 2; A.S.A. 1947, § 82-402.

CASE NOTES

Cited: *Slade v. Gammill*, 226 Ark. 244, 289 S.W.2d 176 (1956).

20-17-902. Burial in registered cemetery required — Records.

(a) It shall be unlawful to bury a dead body outside of a registered cemetery.

(b) The sexton or person in charge of the cemetery shall keep a correct record on a form prescribed by the Division of Health of the Department of Health and Human Services of each body buried in the cemetery.

History. Acts 1929, No. 204, § 3; Pope's Dig., § 6448; Acts 1985, No. 1014, § 3; A.S.A. 1947, § 82-403.

20-17-903. Application to locate or extend boundaries.

(a) Whenever it is proposed to locate a cemetery or to extend the boundaries of an existing cemetery, the party so proposing shall make written application to the county judge or to the mayor of an incorporated city or town, according to whether the cemetery or extension of a cemetery is to be located in the jurisdiction of one (1) or the other of these authorities. The written description shall describe accurately the

location and boundaries of the proposed cemetery or extension of a cemetery.

(b) Before acting upon the application, the county judge or the mayor, as the case may be, shall refer the application to the Division of Health of the Department of Health and Human Services for investigation from a sanitary standpoint. In making such an investigation the division shall take into consideration the proximity of the proposed cemetery or extension of a cemetery to human habitations, the nature of the soil, the drainage of the ground, the danger of pollution of valuable springs or streams of water, and such other conditions as would bear upon the situation.

(c) Having completed its investigation as promptly as can be done, the division shall submit a report to the judge or the mayor, as the case may be, and either approve or disapprove the application.

(d) Having received the report from the division, the judge or the mayor, as the case may be, as recommended by the division, shall either grant or deny the application.

(e) Should the application be granted, the judge or the mayor, as the case may be, shall issue to the party making the application in such form as may be prescribed by the division a permit to establish or extend the cemetery in question.

(f) The permit shall be recorded in the office of the county judge or the mayor and a copy forwarded to the division.

History. Acts 1929, No. 204, § 1; Pope's Dig., § 6446; Acts 1985, No. 1014, § 1; A.S.A. 1947, § 82-401.

CASE NOTES

Discretion of Judge.

Where church sought to establish a cemetery adjacent to the church building, county judge had no discretion to deny the permit after the site was approved by

State Health Department. *Assembly of God Church v. Ford*, 255 Ark. 132, 499 S.W.2d 273 (1973).

Cited: *Skinner v. Berry*, 266 Ark. 91, 583 S.W.2d 27 (1979).

20-17-904. Perpetual care trust.

(a) By trust instrument or will, any person may establish a trust fund in perpetuity with the income from the trust fund to go to the upkeep of certain specified burial lots or plots in one (1) or more cemeteries or burial grounds in the State of Arkansas.

(b)(1) No amount placed in trust pursuant to subsection (a) of this section by any one (1) trustor or testator shall be in excess of the sum of two hundred thousand dollars (\$200,000).

(2) The trust fund shall be:

(A) Invested in state, municipal, or federal obligations;

(B) Deposited for interest in a savings and loan association whose funds are insured by the Federal Savings and Loan Insurance Corporation; or

(C) Placed on interest-bearing time deposit in a bank whose funds are guaranteed by the Federal Deposit Insurance Corporation.

(3) The trust fund shall be so invested or deposited as directed by the circuit court of the county in which are located the burial grounds specified in the trust instrument of the trustor or will of the testator.

(c) The trustee of the fund shall file an annual report in the circuit court of the county in which the burial grounds are located showing the receipts and disbursements from the trust fund.

(d) The provisions of subsections (a)-(c) of this section are in addition to any other laws relating to cemeteries and trust funds.

(e) The rule against perpetuities shall not apply to property or funds set aside or trust created for the perpetual care of burial lots in cemeteries.

History. Acts 1939, No. 122, § 1; 1965, No. 445, §§ 1-4; 1985, No. 597, § 1; A.S.A. 1947, §§ 50-108, 82-427 — 82-430; Acts 2003, No. 766, § 1.

Amendments. The 2003 amendment substituted “two hundred thousand dollars (\$200,000)” for “ten thousand dollars (\$10,000)” in (b)(1).

20-17-905. Abandonment.

(a) The circuit court of the county may order the removal of the dead from an abandoned cemetery which lies outside the limits of any city of the first class of one hundred thousand (100,000) or more in population.

(b) Notice of the filing of a petition for the removal of the dead from an abandoned cemetery under this section shall be in a newspaper having general circulation in the county where the cemetery is located, and hearing on the petition shall be held not earlier than twenty (20) days following this publication.

(c) Upon the hearing, if the court finds that the cemetery is abandoned as defined in subsection (e) of this section, it shall authorize the removal of the dead to another cemetery for which a permanent maintenance fund has been established as provided in § 20-17-1013.

(d) After removal of the dead from a cemetery pursuant to this section, the petitioners shall file with the court a report that the removal has been done, and thereupon the court shall enter an order declaring the cemetery abandoned for cemetery purposes. Upon the entry of the order, the property shall become subject to taxation like other property.

(e) For the purposes of this section, an “abandoned cemetery” is a cemetery:

(1) For which no permanent maintenance fund as provided in § 20-17-1013 has been established;

(2) Which is not suitably maintained and preserved as a cemetery;

(3) In which there have been no interments for a period of fifteen (15) years; and

(4) Which contains at least six (6) permanent grave markers.

History. Acts 1965, No. 392, §§ 1-3; substituted “fifteen (15)” for “seven (7)” in A.S.A. 1947, §§ 82-431 — 82-433; Acts (e)(3); and added (e)(4) and made a related 1993, No. 403, § 14; 2005, No. 2001, § 1. change.

Amendments. The 2005 amendment

20-17-906. Disposition of abandoned cemetery lots.

(a) As used in this section, “lot” means any lot or portion of a lot in a cemetery owned by a county or municipality which has not been used for the interment of human remains and for which no provision for perpetual care was made at the time the lot was sold or at any time subsequent to the time the lot was sold.

(b) The governing body of any county or municipality or other officials having control over a cemetery may maintain in the circuit court in the county within which the cemetery is located a proceeding for the termination and forfeiture of the rights and interests of an owner of any lot or lots in the cemetery whenever the present owner of the lot is unknown to the governing body of the county or municipality or other officials and a period of at least seventy-five (75) years has passed since any portion of the lot has been used for interment purposes.

(c)(1) The proceeding shall be commenced by the filing of a verified petition with the clerk of the circuit court.

(2) The petition shall:

(A) Identify the lot or lots;

(B) State that the portion of the lot to be reclaimed has not been used for the interment of human remains and that a core or sound test has been conducted to determine that the portion contains no remains;

(C) State that the present owner of the lot is unknown to the governing body of the county or municipality or other officials having control over the cemetery;

(D) State that a period of at least seventy-five (75) years has passed since any portion of the lot was used for interment purposes; and

(E) Request that the court issue an order declaring the lot abandoned and further declaring all of the rights and interests of the owner terminated and forfeited.

(3) The petition shall be accompanied by an affidavit by the governing body of the county or municipality or other officials that a diligent search to locate the present owner of the lot has been made but that the owner has not been located.

(d) Upon the filing of the petition and affidavit, the clerk of the circuit court shall fix a time for a hearing on the petition not less than thirty (30) days nor more than ninety (90) days after the date of the filing.

(e)(1) The governing body of the county or municipality or other officials shall give notice of the hearing:

(A) By posting copies of the notice in three (3) conspicuous places in the cemetery which is owned or operated by the governing body or other officials;

(B) By mailing a copy of the notice by registered mail to the last known owner of the lot; and

(C) By publishing the notice one (1) time each week for three (3) successive weeks in some newspaper of general circulation in the county within which the cemetery is located, the first publication being made not less than thirty (30) days before the date of hearing.

(2) The notice shall identify the lot and shall state:

(A) The name and address of the last known owner of the lot;

(B) That a hearing will be held to determine whether or not the present owner of the lot shall have his or her right and interest terminated and forfeited by a declaration of abandonment of the lot; and

(C) The time and place of the hearing.

(f) If upon the hearing the court determines from the evidence presented that the present owner of the lot is unknown, that the governing body or other officials have made a diligent search to locate the present owner, that a period of seventy-five (75) years or more has passed since any portion of the lot has been used for human interment, and that a core or sound test has been conducted to determine that the lot contains no remains, then a decree shall be entered adjudicating the lot, lots, or parts thereof, to have been abandoned and, further, ordering the subsequent termination and forfeiture of all rights and interests of the owner.

(g) The court shall dismiss the proceeding if it determines any of the following from the evidence which is presented:

(1) That any of the material facts stated in the petition are not true;

(2) That the identity of the present owner of the lot is known; or

(3) That the governing body or other official has not made a diligent search to locate the present owner.

(h)(1) Upon order of the court declaring the lot to be abandoned, the full title to the lot shall revert to the cemetery.

(2) The order of the court shall not become final until one (1) year after the date on which it is entered. During that time, any person may petition the court to reopen the proceeding, and the court, after notice to the governing body or other officials, may reopen the proceeding and may hear and consider any additional evidence regarding the ownership of the lot and may modify or amend the order which it made or, if the court makes any of the determinations under subsection (g) of this section, it shall dismiss the proceeding.

(i)(1) Within thirty (30) days after the date on which the court order is entered, the governing body or other officials shall publish notice of the order:

(A) One (1) time in a newspaper of general circulation in the county in which the cemetery is located; and

(B) By mailing a copy of the order by registered mail to the last known owner of the lot or to the last known owner of the right of interment in the lot.

(2) The notice which is mailed and published shall identify the lot which is covered by the order and shall state:

(A) The name and address of the last known owner of the lot;

(B) That the court has ordered that the lot is to be declared abandoned and that the court has further ordered that the rights and interests of the owner are to be subsequently terminated and forfeited; and

(C) The date upon which the order of the court will become final.

(j) The lot shall be deemed abandoned, and the rights and interests of the present owner shall be terminated and forfeited as of the date upon which the order of the court becomes final. Thereafter, the cemetery shall be the owner of the lot and may resell or otherwise recover it.

(k) The proceeds derived from any sale of a lot, the ownership of which is obtained as provided in this section, shall be used as follows:

(1) First, to reimburse the petitioner for the costs of suit and necessary expenses including attorneys' fees incurred by the petitioner in the proceeding;

(2) Then, of the remainder of the proceeds:

(A) Not less than seventy-five percent (75%) shall be held in trust and shall be used only for expenses of administration, maintenance, restoration, preservation, and other improvements of the cemetery; and

(B) Any amounts remaining thereafter shall be used for immediate improvements and maintenance of the cemetery.

(l) In no event shall any existing monument, retaining wall, fence, bench, or other ornamentation be altered or removed by the petitioner or his or her agent or employee or by any subsequent owner of a lot reclaimed and sold as provided in this section.

History. Acts 1995, No. 464, § 1.

A.C.R.C. Notes. This section was formerly codified as § 20-17-907.

20-17-907. County abandoned cemetery registration boards.

(a) The county judge shall appoint three (3) members to an abandoned cemetery registration board if:

(1) At least ten (10) qualified voters within the county petition the county judge to provide minimum maintenance for a specific abandoned cemetery; and

(2) In the case of private property, the property owner agrees in writing that the abandoned cemetery may be accessed for minimum maintenance.

(b) Each member shall be a real property owner in the county.

(c)(1) The initial board members shall be appointed to serve for terms of one (1), two (2), and three (3) years.

(2) The length of the term of each member shall be determined by the county judge when making the appointment.

(d) As the terms of the board members expire, the judge shall appoint successor board members to hold office for a term of three (3) years.

(e) The county judge may reappoint a board member whose term is expiring.

(f) If a vacancy occurs before a board member's term expires, the county judge shall appoint a new member to complete the term.

(g) Members of the board shall serve without pay or other compensation for their services.

(h)(1) The board shall select one (1) of the board members as chair.

(2) The chair shall serve at the pleasure of the board.

History. Acts 2005, No. 2001, § 2.

20-17-908. Responsibilities of county abandoned cemetery registration boards.

(a) A county abandoned cemetery registration board shall have the authority to register abandoned cemeteries within the county as defined in § 20-17-905, but only after a petition has been filed pursuant to § 20-17-907.

(b) At any time, the board may conduct an examination of a petitioned abandoned cemetery within the county.

(c)(1) If funds and voluntary manpower are available, the board shall provide for the cleaning of petitioned abandoned cemeteries within the county that meet minimum requirements for maintenance at least one (1) time in the spring and one (1) time in the fall.

(2) Cleaning is intended to remove weeds, debris, and foreign material that degrade the burial site.

(d) The board may post a small sign to inform the public that the abandoned cemetery is under the care of the board.

History. Acts 2005, No. 2001, § 2.

20-17-909. Minimum maintenance for petitioned abandoned cemeteries.

Petitioned abandoned cemeteries that are no more than one (1) acre in size are eligible for minimum maintenance.

History. Acts 2005, No. 2001, § 2.

20-17-910. Abandoned cemeteries on private property.

(a) If a petitioned abandoned cemetery is on private property with no access by the public, the property owner may grant permission to the county abandoned cemetery registration board to enter for maintenance by providing a written statement.

(b) The statement shall be notarized and shall provide a conditional easement to the board for ingress and egress for the purpose of maintenance.

(c) The easement shall be recorded at the county courthouse within sixty (60) days after signing.

History. Acts 2005, No. 2001, § 2.

20-17-911. Minimum maintenance providers.

Minimum maintenance for petitioned abandoned cemeteries may be secured from any source the county abandoned cemetery registration board can obtain, including work-release prisoners.

History. Acts 2005, No. 2001, § 2.

SUBCHAPTER 10 — CEMETERY ACT FOR PERPETUALLY MAINTAINED CEMETERIES

SECTION.

- 20-17-1001. Title.
- 20-17-1002. Definitions.
- 20-17-1003. Application of subchapter — Exceptions.
- 20-17-1004. Arkansas Cemetery Board — Creation — Members.
- 20-17-1005. Arkansas Cemetery Board — Proceedings.
- 20-17-1006. Arkansas Cemetery Board — Powers and duties.
- 20-17-1007. Examination of cemetery.
- 20-17-1008. Permit — Application.
- 20-17-1009. Permit — Investigation by Division of Health and Human Services.
- 20-17-1010. Permit — Investigation and issuance by the Arkansas Cemetery Board.
- 20-17-1011. Permit — Amendment.
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- 20-17-1024. Preexisting cemeteries.
- 20-17-1025. Protection of cemeteries — Power to lend.
- 20-17-1026. Annual permit fee.
- 20-17-1027. Duties of State Securities Department.

Cross References. Cemetery access roads, § 14-14-812.

Cemeteries — Access — Debris — Disturbance, § 5-39-212.

Effective Dates. Acts 1977, No. 352, § 26: Mar. 3, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that existing laws determining the authority of the Arkansas Cemetery Board do not sufficiently define such authority, that such condition has greatly handicapped the Board in the proper administration of its duties, and that it is found that this Act will require reporting by cemetery corporations without undue burden upon such corporation

and yet provide adequate protection of the permanent maintenance funds; therefore, an emergency exists and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 819, § 3: Mar. 28, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Perpetual Care Cemetery Act is too onerous to be applied to small cemeteries and that this Act is immediately necessary to grant the relief necessary. Therefore, an emergency is hereby declared to exist and this Act being imme-

diately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 131, § 6, and No. 135, § 6; Feb. 10, 1983. Emergency clauses provided: "It is hereby found and determined by the General Assembly that state boards and commissions exist for the singular purpose of protecting the public health and welfare; that citizens over 60 years of age represent a significant percentage of the population; that it is necessary and proper that the older population be represented on such boards and commissions; that the operations of the boards and commissions have a profound effect on the daily lives of older Arkansas; and that the public voice of older citizens should not be muted as to questions coming before such bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258; Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

RESEARCH REFERENCES

ALR. Liability of cemetery in connection with conducting or supervising burial services. 42 ALR 4th 1059.

Liability for improper manner of reinterment of dead bodies. 53 ALR 4th 394.

Liability for desecration of graves and tombstones. 77 ALR 4th 108.

Am. Jur. 14 Am. Jur. 2d, Cemeteries, § 1 et seq.

C.J.S. 14 C.J.S., Cemeteries, § 1 et seq.

UALR L.J. Heller and Sallings, Survey of Public Law, 3 UALR L.J. 296.

20-17-1001. Title.

This subchapter may be cited as the "Cemetery Act for Perpetually Maintained Cemeteries".

History. Acts 1977, No. 352, § 1; A.S.A. 1947, § 82-426.1.

20-17-1002. Definitions.

As used in this subchapter:

- (1) "Board" means the Arkansas Cemetery Board;
- (2) "Care and maintenance" means the continual maintenance of the cemetery grounds and graves in keeping with a properly maintained cemetery;
- (3) "Cemetery" means any land or structure in this state dedicated to and used or intended to be used for interment of human remains. It may

be either a burial park for earth interments, a mausoleum for vault or crypt interments, or a combination of one (1) or more thereof;

(4) "Cemetery company" means an individual, partnership, corporation, or association, now or hereafter organized, owning or controlling cemetery lands or property and conducting the business of a cemetery or making an application with the board to own or control the lands or conduct the business;

(5) "Columbarium" means a structure or room or space in a building or structure used or intended to be used for the interment of cremated human remains;

(6) "Crypt" means a chamber of sufficient size to inter the remains of a deceased person;

(7) "Interment" means any lawful disposition of the remains of a deceased person as provided by law;

(8) "Lot or grave space" means a space of ground in a cemetery used or intended to be used for interment therein;

(9) "Mausoleum" means a community-type structure or room or space in a building or structure used or intended to be used for the interment of human remains in crypts or niches;

(10) "Niche" means a space in a columbarium which is used or intended to be used for the interment of the cremated remains of one (1) or more deceased persons;

(11) "Permit holder" means any cemetery company that holds a permit issued by the board to own or operate a perpetual care cemetery;

(12) "Perpetual care cemetery" means a cemetery for the benefit of which a perpetual care fund has been established in accordance with this subchapter; and

(13) "Secretary" means the Securities Commissioner.

History. Acts 1977, No. 352, § 2; A.S.A. 1947, § 82-426.2; Acts 1997, No. 295, § 1; 2001, No. 1242, § 1.

Amendments. The 2001 amendment inserted present (11) and redesignated the remaining subsections accordingly.

CASE NOTES

Cited: *Skinner v. Berry*, 266 Ark. 91, 583 S.W.2d 27 (1979).

20-17-1003. Application of subchapter — Exceptions.

(a) This subchapter applies to all cemeteries and burial grounds located in the State of Arkansas unless the cemetery is owned and operated by:

(1) A church or similar religious organization;

(2) A municipality or county government;

(3) A family, exclusively for its own family use; or

(4) A community nonprofit association in which no person is entitled to receive pecuniary profit other than the bookkeeper and maintenance crew.

(b) Persons who do not and have never received more than two thousand dollars (\$2,000) gross proceeds in any one (1) year from the sale of parcels of realty to be used as human burial sites are exempt from this subchapter.

(c) All cemeteries that advertise or operate all or a part thereof as perpetual care or permanent maintenance cemeteries shall be subject to this subchapter regardless of the organization of the person or group owning and operating the cemetery or burial grounds.

History. Acts 1977, No. 352, § 3; 1981, No. 819, § 1; A.S.A. 1947, §§ 82-426.3, 82-426.3a.

CASE NOTES

Religious Organizations.

Where no identifiable church assumed responsibility for the care and maintenance of proposed new cemetery, proposal did not meet statutory requirement and persons elected as trustees by several

churches were not proper parties to compel the county judge to issue a permit for the establishment of the cemetery. *Skinner v. Berry*, 266 Ark. 91, 583 S.W.2d 27 (1979).

20-17-1004. Arkansas Cemetery Board — Creation — Members.

(a) The Arkansas Cemetery Board is to consist of seven (7) members selected as follows:

(1) The Securities Commissioner or his or her designated deputy shall be a voting member of the board;

(2) Six (6) members shall be appointed by the Governor for terms of four (4) years, as follows:

(A) Four (4) of the six (6) members appointed by the Governor shall be owners or operators of licensed cemeteries in this state, and these members shall be appointed from lists of five (5) names for each appointment to be made which are submitted to the Governor by the Arkansas Cemetery Association;

(B) One (1) member shall be appointed by the Governor and shall be a citizen of the State of Arkansas, of good character, and a qualified elector, but this person shall not have any interest in a cemetery or funeral home either within or without the State of Arkansas; and

(C) One (1) member shall be sixty (60) years of age or older, appointed from the state at large, subject to the confirmation of the Senate, and shall represent the elderly. This member shall not be actively engaged in or retired from any profession or occupation which is regulated by the board.

(b)(1) The Governor shall appoint one (1) alternate member for the same term and having the same qualifications as a regular member. This member shall substitute for any regular member when a conflict of interest disqualifies a regular member.

(2) Whenever a matter comes before the board involving a cemetery in which any member has a financial interest, then the member shall be disqualified from participating in the discussion or vote on the matter,

and the alternate member shall substitute for the disqualified member in that instance only.

(c) Vacancies on the board due to death, resignation, or other cause of any appointed member shall be filled by appointment of the Governor for the unexpired portion of the term in the same manner as was required for the initial appointment.

(d) Members shall serve without pay or other compensation for their services except that members may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1977, No. 352, § 4; 1981, §§ 6-623 — 6-626, 82-426.4; Acts 1997, No. 512, § 1; 1983, No. 131, §§ 1-3, 5; No. 250, § 190; 1997, No. 295, § 2. 1983, No. 135, §§ 1-3, 5; A.S.A. 1947,

CASE NOTES

Cited: *Skinner v. Berry*, 266 Ark. 91, 583 S.W.2d 27 (1979).

20-17-1005. Arkansas Cemetery Board — Proceedings.

(a) Any action taken by the Arkansas Cemetery Board shall be by the majority vote of the board members who are present at the meeting when the action is taken.

(b) The cemeterian member of the board with the greatest seniority on the board shall be chair of the board, but if the person declines the chairship, then the cemeterian with the next highest seniority on the board shall be chair.

(c) Four (4) members of the board shall constitute a quorum.

(d) The board shall meet subject to call of the chair or upon written demand of any two (2) members.

(e) Any order by the board under this subchapter shall be subject to review by the Pulaski County Circuit Court or by the circuit court of the county in which any part of the cemetery lies, provided that an application for review of the order is made within thirty (30) days of the date of the order.

History. Acts 1977, No. 352, § 4; 1981, No. 512, § 1; A.S.A. 1947, § 82-426.4.

CASE NOTES

Cited: *Skinner v. Berry*, 266 Ark. 91, 583 S.W.2d 27 (1979).

20-17-1006. Arkansas Cemetery Board — Powers and duties.

The Arkansas Cemetery Board shall have the authority to:

(1) Conduct at any time and from time to time such reasonable periodic, special, or other examination of any cemetery or cemetery company, including, but not limited to, an examination of the physical condition or appearance of the cemetery, the financial condition of the

company and any trust funds maintained by the company, and such other examinations as the board or Securities Commissioner deems necessary or appropriate in the public interest. The examinations shall be made by members or representatives of the board or by a certified public accountant or registered public accountant as authorized in § 20-17-1007;

(2) Issue or amend permits to operate a cemetery in accordance with this subchapter;

(3) Suspend or revoke permits to operate a cemetery when any cemetery fails to comply with this subchapter, rules promulgated pursuant to this subchapter, or any order of the board;

(4) Make rules, regulations, and forms to enforce this subchapter;

(5) Require every cemetery company to observe minimum accounting principles and practices and make and keep such books and records in accordance therewith for such period of time as the board may by rule prescribe;

(6)(A) Subpoena witnesses, books, and records in connection with alleged violations of this subchapter or rules or orders of the board. With the approval of the chair of the board or two (2) board members, the Securities Commissioner may issue subpoenas.

(B) In case of contumacy or refusal to obey a subpoena issued to any person, the Pulaski County Circuit Court, upon application by the board, may issue to the person an order requiring him or her to appear before the board or the person designated by the board. Failure to obey the order of the court may be punished by the court as a contempt of court;

(7) Require additional contributions to the permanent maintenance fund of the cemetery where provided for in this subchapter, including, but not limited to, contributions not to exceed three thousand dollars (\$3,000) whenever any cemetery company fails to properly care for and maintain or preserve the cemetery;

(8)(A) Apply to the Pulaski County Circuit Court to enjoin any act or practice and to enforce compliance with this subchapter or any rule, regulation, or order pursuant to this subchapter whenever it appears to the board, upon sufficient grounds or evidence satisfactory to the board, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this subchapter or any rule or regulation pursuant to this subchapter.

(B) The court may not require the board to post a bond;

(9) Apply to the circuit court of the county in which the cemetery is located for appointment of a receiver or conservator of the cemetery corporation or its permanent maintenance fund when it appears to the board that a cemetery corporation is insolvent or that the cemetery corporation, its officers, directors, agents, or the trustees of its permanent maintenance fund have violated this subchapter and the rules promulgated under this subchapter or have failed to comply with any board order; and

(10) Increase, in accordance with regulations adopted by the board, the percentage of the gross proceeds of the sale of any grave space,

crypt, niche, or similar entombment required to be deposited into the permanent maintenance fund of the cemetery in accordance with § 20-17-1016 whenever it is determined that the principal of the permanent maintenance fund is or will be insufficient to generate enough income to operate and maintain the cemetery.

History. Acts 1977, No. 352, § 5; 1981, No. 512, § 2; A.S.A. 1947, § 82-426.5; Acts 1997, No. 295, § 3; 2001, No. 1242, § 2.

Amendments. The 2001 amendment added (10); and made minor stylistic and gender neutral changes throughout.

20-17-1007. Examination of cemetery.

(a)(1)(A) Each cemetery company examined in accordance with § 20-17-1006 shall pay to the Arkansas Cemetery Board a fee for each examination as the board shall prescribe by rule.

(B) In addition, the cemetery company shall pay to the board the amount of expenses and stipends paid by the board to any board member examining the physical condition or appearance of a cemetery when the examination is ordered by the board on its own motion or on request of an interested individual.

(2) However, all examinations shall be conducted by a single examiner or board member, and the examinations shall be conducted only pursuant to an order of the board.

(b)(1) In lieu of any financial examination which the board shall be authorized to make, the board may accept the audit of an independent certified public accountant, provided that the Securities Commissioner has notified the cemetery company that the audit would be accepted and that the cemetery company has notified the commissioner in writing that an audit would be prepared.

(2) The costs of the audit shall be borne by the cemetery company, and the scope of the audit shall be at least equal to the scope of the examination required by the board.

History. Acts 1977, No. 352, § 20; 1981, No. 512, § 5; A.S.A. 1947, § 82-426.20; Acts 1997, No. 250, § 191.

CASE NOTES

Cited: Arkansas Cem. Bd. v. Memorial Properties, Inc., 690 F.2d 158 (8th Cir. 1982).

20-17-1008. Permit — Application.

(a)(1) Prior to making application to the Arkansas Cemetery Board for a permit to establish and operate a new cemetery or for the extension of the boundaries of an existing cemetery, the person proposing to make application shall cause to be published weekly for three (3) weeks in a newspaper of general circulation in the county in which the

proposed cemetery is located a notice that an application will be filed with the board to establish or extend the boundaries of a cemetery in the county.

(2) The publication shall contain a legal description of the land to be used as a cemetery and a statement that any individual or group of individuals desiring to protest the establishment or extension of the cemetery may do so by filing a statement in writing with the board.

(b)(1) Whenever it is proposed to locate a new cemetery or extend the boundaries of an existing cemetery under this subchapter, then the cemetery company so proposing shall file an application for the issuance of a permit with the board.

(2) The application shall describe accurately the location and boundaries of the proposed cemetery or addition.

(3) The application shall be accompanied by:

(A) The recommendation of the mayor or governing official of the municipality if the cemetery is to be located within the corporate limits of a municipality or the recommendation of the county judge of the county within which the cemetery is to be located if outside the corporate limits of a municipality. The recommendation shall state the need and desirability of the proposed cemetery or extension. This recommendation shall be in lieu of the application and permit required in § 20-17-903;

(B) A fee of:

(i) One thousand five hundred dollars (\$1,500) for filing an application for a new cemetery; or

(ii) Four hundred dollars (\$400) for filing an application to extend the boundaries of an existing cemetery;

(C) A survey and map of the cemetery or extension;

(D) A set of rules and regulations for the use, care, management, and protection of the cemetery;

(E) The proposed method of establishing a permanent maintenance fund;

(F) Proof of publication as set forth in subsection (a) of this section of the required notice of intention to apply with the board;

(G) A copy of a current title opinion by an Arkansas-licensed attorney or title insurance policy which reflects that the applicant has or will have good and merchantable title to the land covered by the permit or extension;

(H) A notarized statement disclosing any current or future lien or mortgage on the land covered by the permit;

(I) A notarized statement from any current or future lienholder or mortgage holder on the land covered by the permit or extension that all paid-in-full burial spaces will be released from the lien or mortgage at least semi-annually;

(J) A copy of the perpetual care trust agreement if the application is for a new cemetery permit;

(K) A current balance sheet of the applicant prepared by an independent certified public accountant in accordance with generally

accepted accounting principles which reflects that the applicant has a minimum of twenty thousand dollars (\$20,000) net worth; and

(L) Any other evidence which would tend to show a public need for the proposed cemetery or extension may be included, such as a petition from landowners in the county who believe that a need exists for any additional cemetery or extension.

(4) The burden of establishing public need shall be upon the applicant.

(c) All applications shall be made under oath and filed with the Securities Commissioner not less than twenty (20) days prior to the board meeting at which the application is to be considered.

(d) The board shall have authority to require any cemetery company to submit additional information as it may by rule or order prescribe.

History. Acts 1977, No. 352, §§ 6-8; A.S.A. 1947, §§ 82-426.6 — 82-426.8; Acts 1997, No. 295, § 4; 2005, No. 2169, § 1.

Amendments. The 2005 amendment rewrote (b)(3)(B).

CASE NOTES

Parties.

Where proposal for new cemetery did not fall within statutory exemption for church-operated cemeteries, trustees representing several churches were not

proper parties to compel the county judge to issue a permit for the establishment of the cemetery. *Skinner v. Berry*, 266 Ark. 91, 583 S.W.2d 27 (1979).

20-17-1009. Permit — Investigation by Division of Health of the Department of Health and Human Services.

(a) Upon receipt of an application for the issuance of a permit for a new cemetery or for an extension of the boundaries of an existing cemetery, the Arkansas Cemetery Board shall cause the Division of Health of the Department of Health and Human Services to make an investigation of the proposed cemetery location or extension, with respect to a sanitary viewpoint.

(b) In making the investigation, the division shall take into consideration the proximity of the proposed cemetery, or extension, to human habitation, the nature of the soil, the drainage of the ground, the danger of pollution of springs or streams of water, and such other conditions as would bear upon the situation.

(c) Having completed this investigation, the division shall promptly submit in writing its approval or disapproval from a sanitary standpoint to the board. If the division disapproves the proposed cemetery location or extension, further action on the application shall be suspended until the applicant acquires a location which meets with the approval of the division or until other action, as necessary, is taken.

(d) The cemetery shall pay the division any fee required by law.

History. Acts 1977, No. 352, § 9; A.S.A. 1947, § 82-426.9.

20-17-1010. Permit — Investigation and issuance by the Arkansas Cemetery Board.

(a) If the cemetery company has fully complied with this subchapter and if the Division of Health of the Department of Health and Human Services approves the location of the new cemetery or the extension of the boundaries of an existing cemetery, then the application shall be submitted to the Arkansas Cemetery Board for investigation and for approval or disapproval.

(b) Immediately upon the submission of each application, the board shall make such investigation as shall enable it to determine the fitness of the cemetery company, the need for the cemetery, and all other questions bearing directly or indirectly upon the need or desirability from the public standpoint of the proposed cemetery or extension.

(c)(1) If the application for a new cemetery is approved, the board shall issue a permit to the applicant only after the applicant has filed proof with the board that an initial principal deposit of at least five thousand dollars (\$5,000) has been made to the permanent maintenance fund. This initial five thousand dollars (\$5,000) can be used to meet the liability due the permanent maintenance fund for the first paid-in-full burial space sales sold by the permit holder.

(2) The permit shall be filed in the court of the county in which the cemetery is located and with the division.

History. Acts 1977, No. 352, § 10; A.S.A. 1947, § 82-426.10; Acts 1997, No. 295, § 5.

20-17-1011. Permit — Amendment.

(a) Whenever it is proposed that any cemetery subject to this subchapter amend its present permit, whether for construction of a mausoleum, reduction or increase in percentage of gross sales proceeds to be placed in the permanent maintenance fund, or other amendment, then the cemetery company shall file an application for amendment of the permit.

(b) The application shall be accompanied by:

(1) A fee of four hundred dollars (\$400);

(2) A statement of each proposed amendment;

(3) Statements, documents, and other information necessary to provide justification for the amendment;

(4) If the amendment is for construction of a mausoleum or similar structure, the application shall also include:

(A) Plans and specifications of the structure;

(B) A report of inspection of the plans by the Division of Health of the Department of Health and Human Services;

(C) A copy of the sales contracts and conveyance documents proposed to be used;

(D) A proposed contribution to the permanent maintenance fund;

(E) A statement of whether the amount of the sales force will be utilized and of how preconstruction sales and interments will be handled;

(F) The location of the proposed structure;

(G) The estimated completion date;

(H) Either of the following, when sales proceeds may be received by the cemetery company prior to completion of construction and payment in full of the structure:

(i) An executed escrow agreement approved by the Arkansas Cemetery Board with a federally insured financial institution or other financial institution approved by the board which provides among other things that one hundred percent (100%) of the sales proceeds collected prior to the completion and payment in full of the structure will be placed into escrow; or

(ii)(a) An executed copy of the construction agreement for the structure which sets forth the total construction cost and the date the construction will be completed with either an executed irrevocable letter of credit from a federally insured financial institution or other financial institution approved by the board equal to one hundred twenty-five percent (125%) of the total cost of the structure, a cash bond posted with a federally insured financial institution or other financial institution approved by the board equal to one hundred thirty percent (130%) of the total cost of the structure, or a construction performance bond payable to the board in the amount equal to the total cost of the structure as set forth in the construction agreement.

(b) All letters of credit and bonds, and their issuers, shall be approved by the board. The letter of credit shall state that the funds provided shall be paid to the board for the purpose of completing the construction of the structure or paying in full the completed structure if not done prior to the completion date set forth in the construction agreement. The construction performance bond shall state that the insurer shall advance the funds necessary to complete the construction of the structure or pay for the completed structure, if not done prior to the date set forth in the construction agreement. The cash bond shall provide that the financial institution shall pay the cash proceeds of the bond upon order of the board. The letters of credit or construction bonds shall state that if the structure is not completed and paid for in full within the maximum time provided for construction under this section, such letters of credit and bonds shall be used to complete and pay for the structure; and

(I) Certification of an estimated start date for construction to take place no later than thirty-six (36) months after the date of the permit and further certifying completion within five (5) years after the date of the permit unless extended for good cause by the board; and

(J) Other information necessary to show that construction will be done in a good and workmanlike manner and be fireproof; and

(5) Other information as the board may by rule or order require.

(c) Eight (8) complete copies of the application for the amendment of the permit shall be filed with the Securities Commissioner at least twenty (20) calendar days prior to the meeting at which the board will consider the application.

History. Acts 1977, No. 352, § 12; A.S.A. 1947, § 82-426.12; Acts 1997, No. 295, § 6; 2005, No. 2169, § 2.

Amendments. The 2005 amendment substituted “four hundred dollars (\$400)” for “one hundred dollars (\$100)” in (b)(1).

20-17-1012. Permit — Transfer of ownership.

(a)(1) Whenever any change is proposed in the controlling interest or ownership of any perpetual care cemetery or any cemetery company or any organization that, directly or indirectly, owns a controlling interest in the cemetery company, the cemetery company that holds the current permit and the individual or organization proposing to obtain ownership or gain control shall file an application for the issuance of a new permit with the Arkansas Cemetery Board.

(2) The application shall be accompanied by:

(A) A fee of one thousand five hundred dollars (\$1,500);

(B) A statement of changes, if any, in the survey and map of the cemetery;

(C) A set of rules and regulations for the use, care, management, and protection of the cemetery;

(D) The proposed method of continuing the permanent maintenance fund presently in existence;

(E) A statement of the proposed transfer;

(F) A copy of a current title opinion by an Arkansas-licensed attorney or title insurance policy that reflects that the current permit holder has good and merchantable title to the land covered by the permit;

(G) A notarized statement from the seller and purchaser disclosing any current or future lien or mortgage on the land covered by the permit;

(H) A notarized statement from any current or future lienholder or mortgage holder on the land covered by the permit that all paid-in-full burial spaces will be released from the lien or mortgage at least semiannually;

(I)(i) A current detailed accounting of all paid-in-full merchandise contracts or accounts of the permit holder and seller for which the merchandise has not been delivered to the purchaser or placed in inventory for the benefit of the purchaser.

(ii) This accounting shall be on an individual contract or account basis and contain the name of the purchaser, the contract or account number, the date of the contract, the gross amount of the contract, a description of the merchandise purchased, the date the contract or account was paid in full, and the specific location where the merchandise is stored;

(J) A current notarized statement from the permit holder and seller that the application contains a complete and accurate account-

ing of all his or her outstanding accounts receivable, discounted notes, and paid-in-full merchandise accounts or contracts for which the merchandise has not been delivered to the purchaser or placed in inventory for the benefit of the purchaser;

(K) A current notarized statement from the purchaser or organization gaining control that it will assume the responsibility and liability for all the accounts, notes, and contracts of the seller that are contained in the accountings and schedules that are filed as a part of the application;

(L) The financial statements of the applicant and purchaser required by the rules which reflect that the applicant and purchaser has a minimum net worth of twenty thousand dollars (\$20,000); and

(M) Any additional information required by the board or the Securities Commissioner.

(b) Each vendor or the transferor of the cemetery company or interest therein shall remain liable for any funds and transactions up to the date of the sale or transfer.

(c)(1) Prior to the sale or transfer, the vendor or the transferor shall notify the board of the proposed sale or transfer and shall submit to the board, under oath, any document or record the board may require in order to demonstrate that the vendor or transferor is not indebted to the permanent maintenance fund.

(2) After the transfer of ownership or control, the vendor or transferor shall present to the board proof of currency in the permanent maintenance fund.

(3) The board may additionally require the presentation of proof of the continued current status of the permanent maintenance fund by the vendee or transferee for such reasonable period of time as the board may determine to be necessary in the public interest.

(4) The board is further authorized to recover from that vendor or transferor or vendee or transferee, for the benefit of the permanent maintenance fund, all sums that the vendor or transferor or vendee or transferee has not properly accounted for and paid into the trust fund, together with reasonable expenses incurred by the board by bringing this action.

(d) The cemetery company that has been issued a permit to operate a cemetery under this subchapter shall remain liable for the maintenance and care of the cemetery and all amounts due the permanent maintenance fund until a new permit is issued to the vendee or transferee.

(e) No new permit shall be issued to the vendee or transferee of any cemetery until that vendee or transferee complies with this subchapter and the board orders a new permit to be issued to the vendee or transferee.

(f) Any vendor or transferor or vendee or transferee who violates this section shall be guilty of a violation and upon conviction shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for the violation.

History. Acts 1977, No. 352, §§ 11, 21; A.S.A. 1947, §§ 82-426.11, 82-426.21; Acts 1997, No. 295, § 7; 2001, No. 1242, § 3; 2001, No. 1553, § 32; 2005, No. 1994, § 113; 2005, No. 2169, § 3.

A.C.R.C. Notes. Prior to the 1997 amendment, this section contained a subdivision (a)(2)(D), which read, "The proposed method of continuing the permanent maintenance fund presently in existence." The 1997 amendment neither set out (a)(2)(D) nor specifically deleted it.

Amendments. The 2001 amendment

by No. 1242 inserted "any perpetual care cemetery" in (a)(1).

The 2001 amendment by No. 1553 added (a)(2)(D) and made minor stylistic and gender neutral changes.

The 2005 amendment by No. 1994 substituted "violation" for "misdemeanor" in (f).

The 2005 amendment by No. 2169 substituted "shall" for "must" in (a)(2); and substituted "one thousand five hundred dollars (\$1,500)" for "one hundred dollars (\$100)" in (a)(2)(A).

20-17-1013. Permanent maintenance fund generally.

(a)(1) The permanent maintenance fund is declared to be a trust fund for the purpose of administration, care, and maintenance of the cemetery, including lots, graves, spaces, crypts, niches, burial rights, or otherwise.

(2) The net income from the fund shall be paid to and be exclusively used and expended by the owners, managers, or officers and directors of the cemetery company for the care and maintenance of the cemetery and for no other purpose.

(3) The principal of the fund shall be invested and remain invested in such securities and funds as are permitted by the laws of Arkansas for the investment of policy reserves of life insurance companies as set forth in § 23-60-101 et seq., and in the common trust funds of state or national banks.

(4) However, any permanent maintenance fund having assets of more than two hundred fifty thousand dollars (\$250,000) may invest not more than fifty percent (50%) of its assets in nonassessable common stocks which are listed on a national securities exchange, preferred stocks meeting the requirements of § 23-63-815, and investment trust securities meeting the requirements of § 23-63-820, and the diversification restrictions of § 23-63-805 shall not apply to investments in investment trust securities.

(5) In investing these funds, the trustee shall exercise the judgment and care under the circumstances then prevailing which persons of prudence, discretion, and intelligence exercise in management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income and capital appreciation as well as the probable safety of their capital.

(b) The permanent maintenance fund is authorized by this subchapter, and all sums paid into it or contributed to it shall be deemed to be for charitable and eleemosynary purposes.

(c) The rule against perpetuities shall not be applicable to funds as mentioned in this section.

(d) The trust fund shall be established by executing a written trust agreement approved by the Arkansas Cemetery Board. The agreement may provide that the cemetery company may change the trustee of its

trust fund so long as the successor trustee is in accordance with § 20-17-1014 and the present trustee and successor trustee are parties to the amendment of the agreement.

(e) At a minimum, the trustee shall maintain the following:

(1) A general ledger and general journal or comparable books of entry showing all receipts, disbursements, assets, liabilities, and income of the trust fund;

(2) Documents supporting and verifying each asset of the trust fund; and

(3) A trust agreement.

(f) In establishing a permanent maintenance fund, the cemetery company may from time to time adopt plans for the general care and maintenance of its cemetery.

History. Acts 1977, No. 352, §§ 13, 14;
A.S.A. 1947, §§ 82-426.13, 82-426.14.

CASE NOTES

Cited: *Skinner v. Berry*, 266 Ark. 91, v. *Memorial Properties, Inc.*, 690 F.2d 158 583 S.W.2d 27 (1979); *Arkansas Cem. Bd.* (8th Cir. 1982).

20-17-1014. Permanent maintenance fund — Trustees.

Each cemetery company subject to this subchapter shall establish or transfer the permanent maintenance fund, the income from which can only be used for general maintenance, administration, and preservation of the cemetery, to:

(1) A state or national bank with trust powers; or

(2) Three (3) trustees, only one (1) of whom may have any direct or indirect financial or pecuniary interest in the cemetery, provided all trustees who make disbursements from the trust fund shall furnish a fidelity bond with corporate surety thereon, payable to the trust fund, in a penal sum not less than one hundred percent (100%) of the value of the trust fund principal at the beginning of each calendar year. This bond shall be deposited with the Arkansas Cemetery Board; or

(3) An individual trustee, who in behalf of the cemetery company, shall deposit designated permanent maintenance funds directly into a savings account or certificate of deposit in a state or national bank or savings and loan association in this state not less than forty-five (45) days after collection, provided:

(A) All funds so deposited are federally insured;

(B) The funds are restricted so that the principal amount of the funds cannot be withdrawn without the written approval of, and on a form approved by, the Securities Commissioner; and

(C) Not less than one (1) time a year, interest from the funds may be withdrawn by the individual trustee in behalf of the cemetery company for purposes permitted by this subchapter.

History. Acts 1977, No. 352, § 13;
A.S.A. 1947, § 82-426.13.

CASE NOTES

Cited: Arkansas Cem. Bd. v. Memorial Properties, Inc., 690 F.2d 158 (8th Cir. 1982).

20-17-1015. Permanent maintenance fund — Annual report.

(a) Within sixty (60) days after the end of each calendar year, the Arkansas Cemetery Board shall require the trustee of the permanent maintenance fund to file, under oath, a detailed annual report of the condition of the fund, setting forth the description of the assets of the fund, a description of any property upon which any security constitutes a lien, the cost of acquisition of the asset, the market value of any asset at the time of its acquisition with the current market value of the asset and its status with reference to default, and stating that they are not in any way encumbered by debt, that none of the assets of the fund constitute loans to the cemetery company for which the trust fund is established or to any officer or director thereof, and any other information the trustee or the board deems pertinent.

(b) The report shall show the amounts of principal and undistributed income of the fund at the beginning of the period, the amounts deposited by the cemetery company into the fund during the period, the income earned and disbursements made during the period, the details of any investment or reinvestment during the period, and the balances of principal and income at the end of the period being reported on.

(c)(1) If the trustee of the fund fails to meet the requirements of this section, then it shall be the duty of the board to apply to the Pulaski County Circuit Court for an order to require the trustee of the fund to file a proper report and to make any additional contributions due to the failure to timely file the annual report.

(2) If funds have been misappropriated by the trustee or are not being handled as required by law, then the board shall apply to the circuit court in the county in which the cemetery is located to have a receiver or conservator appointed by the court to take custody of the trust funds for the benefit of the cestui que trust. The receiver or conservator is vested with full power to file such suits against the defaulting trustee as may be necessary to require a full accounting and restoration of the trust funds and to turn the residue over to another trustee as the cemetery shall select, in conformity with this subchapter, as the new trustee of the permanent maintenance fund.

(3) Failure by the trustee to make a timely filing of the annual report required by subsection (a) of this section shall be grounds for the trustee to pay an additional contribution to the permanent maintenance fund of fifty dollars (\$50.00) per day until the report is filed with the board.

History. Acts 1977, No. 352, § 16; 1981, No. 512, § 4; A.S.A. 1947, § 82-426.16; Acts 1997, No. 295, § 8.

20-17-1016. Permanent maintenance fund — Required deposits.

(a) Each cemetery company shall deposit not less than ten percent (10%) of the gross proceeds of each sale into the permanent maintenance fund, provided cemetery companies selling crypts, niches, or similar entombments shall be required to deposit into a permanent maintenance fund an amount not less than the Arkansas Cemetery Board shall by order require if the cemetery company can demonstrate to the board that such lesser amount will be sufficient for perpetual maintenance and upkeep.

(b)(1) The deposit shall be made by the cemetery company not later than forty-five (45) days after the final payment has been made.

(2) However, any cemetery company making sales on installment sales contracts shall deposit the required percentage in accordance with the following:

(A) If the cemetery company receives installment payments directly and if adequate records are maintained as to the full amount of sale, the receipts received, and the balance due, then the cemetery company shall deposit the required percentage of gross proceeds of sale into the permanent maintenance fund not later than the forty-fifth day after the final payment is made, or the cemetery company may deposit the required percentage of each amount received not later than the forty-fifth day after each installment payment by the purchaser; and

(B)(i) If the cemetery company elects to discount the installment sales contracts at a bank or other financial institution and receive a discounted value immediately in cash, the required percentage of the gross sales price shall be placed in a separate restricted escrow account at the time that the contract is discounted.

(ii) The amount so placed in escrow shall not be withdrawn until the lot purchaser defaults on or fully satisfies his or her contract obligations.

(iii) This restricted escrow account may be used by the bank or other financial institution as a part of its required reserve and may be used as recourse if the lot purchaser defaults on the contract.

(iv) Upon default, the required percentage of the gross sales price which was placed in this escrow account may be withdrawn and used by the cemetery company.

(v) Once final payment has been made, the required percentage of the gross sales price which was placed in an escrow account shall be withdrawn and placed immediately into the permanent maintenance fund.

(vi) If the cemetery corporation enters into an agreement with the bank or other financial institution, which in the Securities Commissioner's determination adequately provides for the safeguards set

forth in subdivision (b)(2)(A) of this section, then that subdivision shall not be applicable to the cemetery corporation.

(3) If a cemetery company gives away a grave space or sells a grave space for a price less than the current market price, the gross sales proceeds received for a similar grave space in the immediately adjacent or similar location in the cemetery in a recent arms-length transaction shall be used as the basis to make the required permanent maintenance fund contribution for the gift or reduced price sale.

(c)(1) If the cemetery company fails to make the required deposits in accordance with this section or if the moneys placed in escrow are not deposited as required by this subchapter, then the cemetery company shall be liable for and the board may collect as an additional contribution to the permanent maintenance fund ten dollars (\$10.00) per day but in no instance in amounts to exceed five thousand dollars (\$5,000) or the actual cost of the contract property or cemetery lots, whichever is greater, for the period of the failure.

(2) Upon the refusal of the cemetery company to pay the board the penalty, the board may institute suit to recover the contribution and costs and such other relief as the state in its judgment deems proper and necessary.

History. Acts 1977, No. 352, § 13; 1981, No. 512, § 3; A.S.A. 1947, § 82-426.13; Acts 1997, No. 295, § 9.

CASE NOTES

Bankruptcy.

The State Cemetery Board had no claim to regular contributions and penalties owed to permanent maintenance funds by debtor cemeteries prior to the issuance of state court orders directing compliance with this section; thus, bankruptcy court acted properly in finding that the fees and

finer were not "claims" of the board within the meaning of 11 U.S.C. § 101(4), and in not allowing the board to vote the amounts of the fees and fines with the unsecured creditors. *Arkansas Cem. Bd. v. Memorial Properties, Inc.*, 690 F.2d 158 (8th Cir. 1982).

20-17-1017. Permanent maintenance fund — Voluntary contributions.

The permanent maintenance fund may also receive, take, and hold therefor and as part thereof or as incident thereto any real, personal, or mixed property bequeathed, devised, granted, given, or otherwise contributed to it.

History. Acts 1977, No. 352, § 15; A.S.A. 1947, § 82-426.15.

20-17-1018. Permanent maintenance fund — Penalties.

(a) In addition to the civil provisions of this subchapter, it shall be unlawful for any person to:

(1) Advertise or operate all or part of a cemetery as a perpetual care or permanent maintenance cemetery without holding a valid permit issued by the Arkansas Cemetery Board; or

(2) Fail to place the required contributions into the permanent maintenance fund or to remove any principal of the permanent maintenance fund from trust.

(b) Any person who is in willful violation of subsection (a) of this section shall be guilty of a felony and upon conviction shall be punished by a fine of not more than six thousand dollars (\$6,000) or by imprisonment in the state penitentiary for not more than six (6) years, or by both fine and imprisonment.

History. Acts 1977, No. 352, § 21; A.S.A. 1947, § 82-426.21; Acts 1997, No. 295, § 10.

20-17-1019. Conveyance of lots.

(a) An instrument of conveyance or deed for burial lots, plots, or parts thereof shall be issued to the purchaser upon complete payment of the purchase price.

(b) Only the cemetery company or its agents may sell or convey lots, grave spaces, crypts, niches, or parts thereof, except that:

(1) The owner of any lot, grave space, niche, crypt, or part thereof may sell his or her lot or part thereof if he or she first has offered its transfer in writing to the cemetery company at the purchase price then being charged by the cemetery company for similar lots and if the cemetery company refused the offer within thirty (30) days after the offer; or

(2) An owner may convey or devise to the cemetery company his or her right and title in and to any lot, grave space, niche, crypt, or part thereof.

(c) The secretary or other responsible officer of the cemetery company shall file and record in its books all instruments of transfer.

(d) The conveyance shall be signed by the persons having proper authority.

(e) Any mortgage or lien on the cemetery land by a permit holder shall not encumber any burial space that has been sold prior to the granting of the mortgage or creation of the lien.

(f)(1) To ensure that all burial spaces remain unencumbered, the permit holder shall file with the Arkansas Cemetery Board before execution of any mortgage or creation of any lien a notarized statement reflecting the specific description of the land to be affected by the mortgage or lien and a waiver or release by the proposed mortgagee or lienholder of any claim or right to any burial space for which an instrument of conveyance or deed has been or may be executed.

(2) The failure of a permit holder to comply with the requirements of this subsection shall be grounds for the board to require an additional contribution to the permanent maintenance fund of the cemetery in an

amount not exceeding one thousand dollars (\$1,000) for each burial space encumbered.

History. Acts 1977, No. 352, § 18; A.S.A. 1947, § 82-426.18; Acts 2001, No. 1242, § 4. **Amendments.** The 2001 amendment added (e) and (f).

20-17-1020. Unlawful act.

It shall be unlawful for any cemetery company to bury or inter a body in any path, alley, or walk.

History. Acts 1977, No. 352, § 18; A.S.A. 1947, § 82-426.18.

20-17-1021. Disposition of contributions and fees.

(a) All contributions imposed pursuant to this subchapter shall be deposited into the respective permanent maintenance fund of the cemetery company upon which the contribution is imposed.

(b) All fees imposed pursuant to this subchapter shall be paid to the Arkansas Cemetery Board.

History. Acts 1977, No. 352, § 23; A.S.A. 1947, § 82-426.23.

20-17-1022. Records required.

(a) All cemetery companies shall make and keep accounts and records which shall indicate that they have made the required contributions to the permanent maintenance fund. The burden is upon the cemetery company to maintain the accounts and records.

(b) Unless otherwise approved by the Arkansas Cemetery Board, all sales contracts and deeds issued by the cemetery company shall be numbered prior to when they are executed by the cemetery company and shall contain those items that the board by rule or order prescribes.

History. Acts 1977, No. 352, § 17; A.S.A. 1947, § 82-426.17.

CASE NOTES

Cited: *Skinner v. Berry*, 266 Ark. 91, 583 S.W.2d 27 (1979).

20-17-1023. Annual report of condition of cemetery company.

(a) Within sixty (60) days after the end of the calendar year, each cemetery company shall file with the Arkansas Cemetery Board a report, under oath, of its condition. The report shall contain at least the following information:

(1) The name of the cemetery company, the location of the cemetery, the name of the person in charge of the records of the cemetery company, and the phone number of the company;

(2) The amount of sales of cemetery lots, graves, spaces, mausoleums, crypts, or niches for which payment has been made in full and certificates or deeds of conveyance have been issued during the preceding calendar year;

(3) The amounts paid into the permanent maintenance fund and the income received from the fund during the preceding calendar or fiscal year, including the total amount due the fund whether paid in or not, the amounts due the fund at the date of the report, and the amount expended for maintenance of the cemetery;

(4) The names and addresses of the owners of the cemetery company or the officers and directors of the company and stating any change of control which has occurred during the past fiscal or calendar year, the date of incorporation, and listing the resident agent and office if the cemetery company is a corporation; and

(5) Such other information as the board may by rule or order require.

(b) The report shall be accompanied by:

(1) A filing fee of three hundred twenty-five dollars (\$325); and

(2)(A) A fee of seven dollars (\$7.00) for each burial sale contract entered into after July 1, 2005, by the cemetery company regardless of the number of spaces sold under the contract regarding plots, crypts, and niches.

(B)(i) The first payment of fees under subdivision (b)(2)(A) of this section shall be due on or before March 1, 2006, and shall be based on the number of contract sales entered into during the period of July 1, 2005, through December 31, 2005.

(ii) Subsequent annual reports shall be based upon contract sales entered into for the previous calendar year.

(c)(1) Failure by the cemetery company to make a timely filing of its annual report shall be grounds for an additional contribution to the permanent maintenance fund of fifty dollars (\$50.00) per day until the report is filed with the board.

(2) If the cemetery company refuses to pay the contribution or fees, the board shall institute suit to recover the penalty and fee and costs and such other relief as the state in its judgment deems proper.

(3) If the cemetery company shall fail to meet the requirements of this section, then the board shall apply to the Pulaski County Circuit Court for the proper order to require a report.

(d) The beginning and ending dates of the report shall coincide with the dates of the report of the trustee required in § 20-17-1015.

(e) Upon receipt of a properly completed annual report from the trustee and the cemetery company, the board shall issue to the cemetery company an annual operating permit which shall be prominently displayed at the main entrance to the cemetery.

History. Acts 1977, No. 352, § 19; A.S.A. 1947, § 82-426.19; Acts 2005, No. 2169, § 4. inserted the subdivision (1) designation in (b) and made related changes; rewrote present (b)(1); and added (b)(2).

Amendments. The 2005 amendment

CASE NOTES

Cited: Arkansas Cem. Bd. v. Memorial Properties, Inc., 690 F.2d 158 (8th Cir. 1982).

20-17-1024. Preexisting cemeteries.

(a) All cemetery companies in existence at the time of the passage of this act shall be permitted to continue operation under their present permits except that those cemetery companies which are subject to this subchapter and have not been filing annual reports with the Arkansas Cemetery Board shall, by January 1, 1978, file the following information and shall be subject to the jurisdiction of the board:

(1) The name of the owner and operator of the cemetery and a statement of the form of business organization, that is, corporation, nonprofit corporation, partnership, etc., along with a copy of the articles, bylaws, or applicable organization documents;

(2) The location and legal description of the cemetery, including a survey and map of the cemetery delineating the lots, plots, pathways, etc.;

(3) The rules and regulations for the use, care, management, and protection of the cemetery, including a list of lot prices and all charges and assessments made by the cemetery company;

(4) Details concerning the permanent maintenance trust fund including a copy of the trust agreement, the name of the trustee, the report of the trustee, etc.;

(5) A copy of the present permit and proof of registration with the Division of Health of the Department of Health and Human Services;

(6) A fee as the board by rule shall prescribe;

(7) A copy of the deed to the present cemetery company conveying land used as a cemetery and copies of any encumbrances, mortgages, etc., or a statement that there are none;

(8) The name and address of any officers, directors, managers, the degrees of ownership of each, and a statement concerning subsidiaries and affiliates or the organization controlling the cemetery company;

(9) A statement as to whether there are any mausoleums or similar structures; and

(10) Any additional information necessary to make the filing complete.

(b) Failure to file the information shall result in the suspension or revocation of the permit, and the cemetery shall be considered not to be a registered cemetery. Until a new permit to operate a cemetery is obtained, all burials or sales shall be unlawful and the person operating the cemetery or allowing the burials shall be subject to the penalties and remedies set forth in §§ 20-17-1006, 20-17-1012(f), and 20-17-1018.

History. Acts 1977, No. 352, § 22; A.S.A. 1947, § 82-426.22.

Publisher's Notes. In reference to the term "at the time of the passage of this

act," Acts 1977, No. 352, was signed by the Governor and became effective on March 3, 1977.

20-17-1025. Protection of cemeteries — Power to lend.

(a) On August 1, 2001, the Arkansas Cemetery Board shall segregate one hundred eighty thousand dollars (\$180,000) within its general operating fund to be administered by the Securities Commissioner and only used to lend a court-appointed receiver or conservator the funds necessary to assure that a cemetery will be properly maintained and will continue to be a going concern, including the funds necessary to pay any reasonable surety bond premium which is required to be posted by the court.

(b) The board may take any legal action necessary against a cemetery company, receiver, or conservator to recover any funds loaned by the board to or for the benefit of the cemetery, the cemetery company, receiver, or conservator for the payment of maintenance expenses or unpaid loans.

(c) Disbursement from such funds for loans to a receiver or conservator shall be made on a "first in, first out" basis as determined by the commissioner.

(d) Donations to the board to fund such loans may be accepted by the commissioner from any cemetery company, organization, or individual.

(e) The board may waive payment or extend the payment period for any loan made to a receiver or conservator if the board determines that it is unlikely that the receiver or conservator has or will receive sufficient funds to repay the loan and that the funds were or are needed to maintain and operate the cemetery for the benefit of the lot owners and the general public.

History. Acts 1997, No. 295, § 11; 2001, No. 1242, § 5.

Amendments. The 2001 amendment, in (a), substituted "2001" for "1997," "one

hundred eighty thousand dollars (\$180,000)" for "one hundred thirty thousand dollars (\$130,000)" and "lend" for "loan"; and added (e).

20-17-1026. Annual permit fee.

(a) By March 1 of each year, each permit holder shall pay to the Arkansas Cemetery Board a permit renewal fee in the amount of one hundred dollars (\$100).

(b) All annual permit fees shall be classified as general funds of the board and shall be used to make loans to receivers and conservators as provided in § 20-17-1025.

History. Acts 2001, No. 1242, § 6; 2005, No. 2169, § 5.

Amendments. The 2005 amendment substituted "By" for "On" in (a).

20-17-1027. Duties of State Securities Department.

(a) The State Securities Department shall assist the Arkansas Cemetery Board in the performance of its duties.

(b) Assistance under subsection (a) of this section shall include, but is not limited to:

(1) Receiving and disseminating filings, questions, and requests on behalf of the board to the members of the board in advance of each meeting;

(2) Reviewing all filings, questions, and requests on behalf of the board and offering its opinion on the resolution of the matter;

(3) Issuing written responses regarding complaints received by the board;

(4) Scheduling all meetings in conjunction with the Chair of the Arkansas Cemetery Board;

(5) Providing appropriate legal notices for all scheduled meetings;

(6) Establishing a site where meetings of the board may be held;

(7) Scheduling the services of a court reporter for all meetings of the board;

(8) Providing legal representation and assistance through the legal staff of the department to the board in matters pertaining to this subchapter;

(9) Acting as a liaison between the board and any court involved in the administration of any perpetual care cemetery placed in receivership;

(10) Performing inspections at cemeteries for which complaints have been received by the board;

(11) Performing special audits as necessary;

(12) Scheduling regular audits of perpetual care cemeteries;

(13) Administering the annual perpetual care reporting for all perpetual care cemeteries; and

(14) Assisting in the formulation of legislation on behalf of the cemetery industry and the board.

History. Acts 2005, No. 2169, § 6.

SUBCHAPTER 11 — CEMETERY IMPROVEMENT DISTRICTS

SECTION.

20-17-1101. Purpose of district.

20-17-1102. Petition generally.

20-17-1103. Petition — Notice and hearing.

20-17-1104. Board of commissioners — Appointment.

20-17-1105. Board of commissioners — Powers and duties.

20-17-1106. Board of commissioners — Proceedings — Officers — Employees — Selection of depository.

SECTION.

20-17-1107. Board of commissioners — Liability.

20-17-1108. Formation of plans — Assessors and assessments generally.

20-17-1109. Assessment — Notice and hearings.

20-17-1110. Assessment — Annual reassessment.

20-17-1111. Assessment — Order — Lien.

20-17-1112. Assessment — Filing and collection.

SECTION.

- 20-17-1113. Assessment — Time for payment — Failure to pay — Redemption.
- 20-17-1114. Expenditures — Public proceedings and transactions — Filing of report.

SECTION.

- 20-17-1115. Issuance of notes.
- 20-17-1116. Dissolution.
- 20-17-1117. Certain suits in public interest.
- 20-17-1118. Fee of collector and county clerk.

Cross References. Tort liability, immune from, § 21-9-301 et seq.

Cemetery access roads, § 14-14-812.

Cemeteries — Access — Debris — Disturbance, § 5-39-212.

Preambles. Acts 1957, No. 318, contained a preamble which read: "Whereas, there are populous rural areas of this State that are great distances from the nearest public cemetery and the creation and maintenance of a public cemetery within these areas would enhance the property value of said areas, and

"Whereas, it is not practical to do so with voluntary contributions, since some will pay their share and some will not, and there is a need for the right of a majority of landowners to create a district which would not be authorized to sell bonds but merely authorized to extend an assessment annually and use this annual assessment to provide and maintain the cemetery for the use and benefit of all property holders within the district, and

"Whereas, this act does not permit the issuing of any bonds, and provides that the commissioners of the district are to be appointed by the county court, and must be resident property holders of the districts;

"Now, therefore ..."

Effective Dates. Acts 1957, No. 318, § 17: Mar. 27, 1957. Emergency clause provided: "It has been found and is declared by the General Assembly of Arkansas that there are inadequate cemetery facilities in rural areas, and since the value of real property in many areas is greatly diminished due to the lack of such facilities within a reasonable distance; that there is an urgent need to relieve this condition. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

20-17-1101. Purpose of district.

The purpose of the district shall be the building and maintaining of a cemetery or cemeteries for the use and benefit of the property holders within the district, and it is realized that the cemetery would be a benefit to all the real property located in the district.

History. Acts 1957, No. 318, § 1; A.S.A. 1947, § 20-1301.

20-17-1102. Petition generally.

(a) Upon the petition of a majority in value of the owners of real property in any designated area, it shall be the duty of the county court to lay off into an improvement district the territory described in the petition and to name three (3) commissioners of the district who are resident property holders in the district.

(b)(1) The petition for and the court order creating the district shall designate the maximum amount that may be expended for labor,

materials, and personal services in any year in maintaining the grounds and facilities of the cemetery.

(2) The purpose for which the district is to be formed shall be stated in the petition, and the judgment establishing the district shall give it a name which shall be descriptive of the purpose. It shall also receive a number to prevent its being confused with other districts for similar purposes.

History. Acts 1957, No. 318, §§ 1, 2;
A.S.A. 1947, §§ 20-1301, 20-1302.

20-17-1103. Petition — Notice and hearing.

(a)(1) It shall be the duty of the county clerk to give notice of the filing of the petition, describing the territory to be affected and calling upon all persons who wish to be heard upon the question of the establishment of the district to appear before the county court on a day to be fixed in the notice.

(2) The notice shall be published one (1) time a week for two (2) consecutive weeks in some newspaper published and having a bona fide circulation in the county where the lands affected are situated.

(3) This notice may be in the following form:

“Notice is hereby given that a petition has been filed praying for the formation of an improvement district for the purpose of Said petition is on file at the office of the County Clerk ofCounty, where it is open to inspection. All persons desiring to be heard on the question of formation of said district will be heard by the County Court atM., on theday of, 20..... The following lands are affected: (Here give description of lands affected; the same may be described by using the largest subdivisions possible.)

.....
County Clerk”

(b) Any number of identical petitions may be circulated and identical petitions with identical names may be filed at any time until the county court acts.

(c)(1) On the day named in the notice it shall be the duty of the county court to meet to hear the petition and to determine whether those signing the petition constitute a majority in value.

(2) If the county court determines that a majority in value have petitioned for the improvement, it shall enter its judgment laying off the district as defined in the petition and appointing the commissioners.

(3) If it finds that a majority has not signed the petition, it shall enter its order denying the petition.

(d) Any petitioner or any opponents of the petition may appeal from the judgment of the county court creating or refusing to create the district, but the appeal must be taken and perfected within thirty (30) days. If no appeal is taken within that time, the judgment creating the district shall be final and conclusive upon all persons.

History. Acts 1957, No. 318, § 2; imposes additional notice requirements prior to the creation of improvement districts.
A.S.A. 1947, § 20-1302.

Publisher's Notes. Section 14-86-303

20-17-1104. Board of commissioners — Appointment.

(a) The board of commissioners shall be resident property holders in the district and shall be citizens of integrity and good business ability.

(b)(1) The commissioners shall be appointed to serve for terms of one (1), two (2), and three (3) years, respectively. The length of the term of each commissioner shall be stated in the order of the county court making the appointment.

(2) As the terms of the commissioners expire, the county court shall appoint successors to hold office for a term of three (3) years.

(c)(1) The county court may reappoint a commissioner whose term is expiring.

(2) In case of a vacancy on the board of commissioners after the commissioners have organized, the county court shall appoint some resident property holder as his or her successor, who shall qualify in like manner and within a like time.

(d) The commissioners shall serve without compensation.

History. Acts 1957, No. 318, §§ 1-3;
A.S.A. 1947, §§ 20-1301 — 20-1303.

20-17-1105. Board of commissioners — Powers and duties.

(a) The board of commissioners may take charge of, purchase, and provide a site or grounds and additions thereto, to provide and maintain streets, aisles, outside fences, drainage, and other necessary facilities, and to employ a caretaker or caretakers for the cutting of grass and the planting and care of trees, shrubs, and flowers.

(b) The commissioners shall establish lots, plots, or burial spaces within the space provided for a cemetery and issue permits for the interment of deceased persons therein.

History. Acts 1957, No. 318, § 2;
A.S.A. 1947, § 20-1302.

20-17-1106. Board of commissioners — Proceedings — Officers — Employees — Selection of depository.

(a)(1) Within thirty (30) days after their appointment, the commissioners shall take and file their oaths of office with the county clerk, in which they shall swear to support the Constitution of the United States and the Constitution of the State of Arkansas, to faithfully discharge their duties as commissioners, and that they will not be interested, directly or indirectly, in any contract let by the board.

(2) Any commissioner failing to file the oath within the period shall be deemed to have declined the office, and the county court shall

appoint some resident property holder as his or her successor who shall qualify in like manner within a like time.

(b) The board shall organize by electing one (1) of its members chair, and it shall select a secretary.

(c) It may also employ such agents, servants, attorneys, and engineers as it deems best and fix their compensation.

(d) Each district shall be a body corporate with power to sue and be sued, and it shall have a corporate seal.

(e) The board shall also select some solvent bank or trust company as the depository of its funds, exacting of the depository a bond in an amount equal to the amount of money likely to come into its hands.

History. Acts 1957, No. 318, § 3;
A.S.A. 1947, § 20-1303.

20-17-1107. Board of commissioners — Liability.

No member of the board of commissioners shall be liable for any damages unless it shall be made to appear that he or she had acted with a corrupt and malicious intent.

History. Acts 1957, No. 318, § 12;
A.S.A. 1947, § 20-1312.

20-17-1108. Formation of plans — Assessors and assessments generally.

(a) Upon the qualification of the commissioners, they shall form plans for the improvements they intend to make and the property and equipment they intend to purchase.

(b)(1) The commissioners shall thereupon appoint three (3) assessors to assess the annual benefits which will accrue to the real property within the district from making the improvements upon and the operation of the cemetery and shall fix their compensation.

(2) The assessors shall take an oath that they will well and truly assess all annual benefits that will accrue to the landowners of the district by the making of the proposed improvement, and by the acquisition and operation of the cemetery.

(c) The assessors shall thereupon proceed to assess the annual benefits to the lands within the district, shall inscribe in a book each tract of land, and shall extend opposite each tract of land, the amount of annual benefits that will accrue each year to the land by reason of the improvement.

(d)(1) In case of any reassessment, the reassessment shall be advertised and equalized in the same manner as is provided in this section for making the original assessment.

(2) The owners of all property whose assessment has been raised shall have the right to be heard and to appeal from the decision of the assessors, as in the original assessment.

(e) The assessors shall place opposite each tract the name of the supposed owner, as shown by the last county assessment, but a mistake

in the name shall not void the assessment, and the assessors shall correct errors which occur in the county assessment list.

(f) The commissioners shall have the authority to fill any vacancy in the position of assessor, and the assessors shall hold their offices at the pleasure of the board.

History. Acts 1957, No. 318, § 4;
A.S.A. 1947, § 20-1304.

20-17-1109. Assessment — Notice and hearings.

(a) The assessment shall be filed with the county clerk of the county, and the secretary of the board shall thereupon give notice of its filing by publication one (1) time a week for two (2) weeks in a newspaper published and having a bona fide circulation in the county. This notice may be in the following form:

“Notice is hereby given that the assessment of annual benefits ofDistrict Numberhas been filed in the office of the County Clerk ofCounty, where it is open for inspection. All persons wishing to be heard on said assessment will be heard by the assessors of said district in the office of the County Clerk between the hours of 1 p.m. and 4 p.m., at, on theday of, 20...”

(b)(1)(A) On the day named by the notice, it shall be the duty of the assessors to meet at the place named as a board of assessors, to hear all complaints against the assessment, and to equalize and adjust the assessment.

(B) If the board is unable to hear all complaints between the hours designated, it shall adjourn over from day to day until all parties have been heard.

(2) The board’s determination shall be final, unless suit is brought in the circuit court within thirty (30) days to review it.

History. Acts 1957, No. 318, § 5;
A.S.A. 1947, § 20-1305.

20-17-1110. Assessment — Annual reassessment.

(a) The commissioners shall one (1) time a year order the assessors to reassess the annual benefits of the district, provided there have been improvements made or improvements destroyed or removed from one (1) or more tracts of land in the district making it necessary to have the annual benefits revised.

(b) Whereupon, it shall be the duty of the assessors to reassess the benefits of the district, and the annual benefits assessed may be raised or lowered as conditions of the property change. However, the annual benefits extended against any piece of property shall not be increased from the annual benefits originally extended unless improvements are made to the land that will be benefited by the operation of the cemetery.

History. Acts 1957, No. 318, § 6;
A.S.A. 1947, § 20-1306.

20-17-1111. Assessment — Order — Lien.

(a) The board of commissioners of the district shall at the time that the annual benefit assessment is equalized or at any time thereafter enter upon its records an order, which shall have all the force of a judgment, provided that there shall be assessed upon the real property of the district and collected annually the annual benefit assessment set opposite each tract of land described. The annual benefit is to be paid by the owner of the real property in the district, payable as provided in the order.

(b)(1) The uncollected annual benefit assessment as extended shall be a lien upon the real property in the district against which it is extended from the time the same is levied, shall be entitled to preference over all demands, executions, encumbrances, or liens whensoever created, and shall continue until the assessment with any penalty and costs that may accrue thereon shall have been paid.

(2) Notice of the amount due shall be given to each landowner, if he or she fails to pay his or her assessment on or before the third Monday in April by mail at his or her last known address.

(3)(A) The remedy against the annual benefit assessment shall be by suit in equity, and the suit shall be brought within thirty (30) days from the time that the notice is mailed.

(B) On the appeal, the presumption shall be in favor of the legality of the annual benefit assessment.

History. Acts 1957, No. 318, § 7;
A.S.A. 1947, § 20-1307.

20-17-1112. Assessment — Filing and collection.

(a) The original assessment record or any reassessment record shall be filed with the county clerk, whose duty it shall be to extend the annual benefit assessment annually upon the tax books of the county until the district is dissolved.

(b) It shall then be the duty of the collector to collect each year the annual benefit assessment extended upon the book along with the other taxes, and the taxes shall be paid over by the collector to the depository of the district at the same time that he or she pays over the county funds.

(c)(1)(A)(i) If there is any change in the annual benefits assessed, a certified copy of the revised assessment shall be filed with the county clerk who shall extend the revised assessment annually upon the tax books until a new assessment is made, which shall be extended upon the tax books in a similar manner.

(ii) The power to reassess and extend the assessment upon the tax books shall be a continuing power as long as the district continues to exist.

(B) It shall be the duty of the county collector to collect the taxes so extended.

(2) In lieu of filing the reassessment, the assessors may make the changes in the assessments in red ink on the assessment already on file, or the assessment record may contain many columns, at the head of which the year shall be designated, and in the column the new annual benefits may be shown in red ink, which will indicate any increase or decrease in the original annual benefits extended. When the change is made, a red ink line shall be drawn through the figures showing the original annual benefits extended.

History. Acts 1957, No. 318, § 8;
A.S.A. 1947, § 20-1308.

20-17-1113. Assessment — Time for payment — Failure to pay — Redemption.

(a)(1) All annual benefits extended and levied under this subchapter shall be payable between the third Monday in February and the third Monday in April of each year.

(2) If any annual benefit assessments levied by the board under this subchapter are not paid at maturity, the collector shall not embrace the assessments in the taxes for which he or she shall sell the lands, but he or she shall report the delinquencies to the board of commissioners of the district who shall add to the amount of the annual benefit assessment a penalty of ten percent (10%).

(b) The board of commissioners shall enforce the collection by equitable proceedings in the circuit court of the county in the manner provided by §§ 14-121-426 — 14-121-432.

(c) However, the owner of property sold for taxes thereunder shall have the right to redeem it at any time within two (2) years from the time when his or her lands have been stricken off by the commissioner making the sale.

History. Acts 1957, No. 318, § 9;
A.S.A. 1947, § 20-1309.

20-17-1114. Expenditures — Public proceedings and transactions — Filing of report.

(a) The depository shall pay out no money except under the order of the board of commissioners and upon a voucher check signed by at least two (2) of the commissioners. Every voucher check shall state upon its face to whom payable, the amount, and the purpose for which it is used. All voucher checks shall be dated and shall be numbered consecutively in a record to be kept by the board of the number and amount of each.

(b) All proceedings and transactions of the board shall be a matter of public record and shall be open to the inspection of the public.

(c) The board of commissioners shall file with the county clerk in January of each year a certified itemized report showing all moneys

received, the date of receipt, and the source from which received, all moneys paid out, the date paid, to whom paid, and for what purpose, during the preceding year, together with an itemized list of all delinquent taxes, showing the owner, a description of the property, the years for which the tax is delinquent, and the amount of total delinquency.

History. Acts 1957, No. 318, § 10;
A.S.A. 1947, § 20-1310.

20-17-1115. Issuance of notes.

(a) In order to acquire equipment and to do the work, the board may issue the negotiable notes of the district signed by the members of the board and bearing a rate of interest not exceeding six percent (6%) per annum and may pledge and mortgage a portion of future annual benefit assessments as collected for the payment thereof.

(b) Any petitions for the creation of a district and the court order creating the district shall limit the total amount of notes that may be outstanding at any one (1) time in excess of ten thousand dollars (\$10,000).

(c) The district shall have no authority to issue bonds.

History. Acts 1957, No. 318, § 11;
A.S.A. 1947, § 20-1311.

20-17-1116. Dissolution.

(a) The district shall not cease to exist upon the completion of the improvement, but it shall continue to exist for the purpose of operating and maintaining the cemetery until such time as the owners of a majority in value of the real property within the district petition the county court for dissolution of the district.

(b) Publication of the petition for dissolution, as provided for in creating the district, shall be made, and if the county court finds that a majority in value of the real property in the district has petitioned for the dissolution of the district, the district shall be dissolved.

(c) Parties for or against the dissolution shall have the same right of appeal as in the creation of the district.

History. Acts 1957, No. 318, § 13;
A.S.A. 1947, § 20-1313.

20-17-1117. Certain suits in public interest.

(a) All cases involving the validity of the districts or the annual benefit assessments and all suits to foreclose the lien of annual benefit assessments shall be deemed matters of public interest, and they shall be advanced and disposed of at the earliest possible moment.

(b) All appeals therefrom shall be taken and perfected within thirty (30) days.

History. Acts 1957, No. 318, § 14;
A.S.A. 1947, § 20-1314.

20-17-1118. Fee of collector and county clerk.

In collecting annual benefit assessments in any district created under this subchapter, the collector of taxes in any county shall deduct one percent (1%) of the annual benefit assessments or taxes so collected, and retain one-half of one percent (0.5%) as the fee of the collector for collecting the assessments or taxes and pay over the remaining one-half of one percent (0.5%) of the assessments or taxes collected to the county clerk of the county as the fee of the county clerk for extending on the assessment records of the county the annual benefit assessments or taxes.

History. Acts 1957, No. 318, § 15;
A.S.A. 1947, § 20-1315.

CHAPTER 18 VITAL STATISTICS ACT

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ADMINISTRATION.
3. RECORDS GENERALLY.
4. BIRTHS AND ADOPTIONS.
5. MARRIAGES, ANNULMENTS, AND DIVORCES.
6. DEATHS.
7. PUTATIVE FATHER REGISTRY.

RESEARCH REFERENCES

Am. Jur. 39 Am. Jur. 2d, Health, § 51.
C.J.S. 39A C.J.S., Health, § 74.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

20-18-101. Title.
20-18-102. Definitions.
20-18-103. Applicability.

SECTION.

20-18-104. [Repealed.]
20-18-105. Penalties.

Cross References. Death and disposition of the dead, § 20-17-101 et seq.

Publisher's Notes. For Comments regarding the Model State Vital Statistics Act, see Commentaries Volume B.

Effective Dates. Acts 1981, No. 120, § 33; Feb. 19, 1981. Emergency clause

provided: "It is hereby found and declared by the General Assembly that the existing vital statistics act are outdated, with the result that it is impossible to properly and efficiently administer the vital statistics laws; that because of such inadequacy, the State is not having its health and related

needs properly taken care of, all of which is to the detriment of the public health, safety, and welfare; and that only by the immediate operation of this Act can these conditions be alleviated. Therefore, an

emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health, and safety, shall take effect and be in full force from and after its passage and approval."

20-18-101. Title.

This chapter may be cited as the "Vital Statistics Act".

History. Acts 1981, No. 120, § 31;
A.S.A. 1947, § 82-530.

20-18-102. Definitions.

As used in this chapter:

- (1) "Board" means the State Board of Health;
- (2) "Date of filing" means the date a vital record is accepted for registration by the Division of Vital Records of the Division of Health of the Department of Health and Human Services;
- (3) "Dead body" means a human body or parts of a human body from the condition of which it reasonably may be concluded that death occurred;
- (4)(A) "Fetal death" means death prior to the complete expulsion or extraction from its mother of a product of human conception irrespective of the duration of pregnancy and which is not an induced termination of pregnancy. The death is indicated by the fact that after the expulsion or extraction, the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. Heartbeats shall be distinguished from the transient cardiac contractions. Respirations shall be distinguished from fleeting respiratory efforts or gasps.
(B) "Induced termination of pregnancy" means the purposeful interruption of pregnancy with the intention other than to produce a live-born infant, and which does not result in a live birth, except that this definition excludes management of prolonged retention of products of conception following fetal death.
- (C) "Spontaneous fetal death", "stillbirth", or "miscarriage" means the expulsion or extraction of a product of human conception resulting in other than a live birth and which is not an induced termination of pregnancy;
- (5) "File" means the presentation and acceptance of a vital record provided for in this chapter for registration by the Division of Vital Records;
- (6) "Final disposition" means the burial, interment, cremation, removal from Arkansas, or other authorized disposition of a dead body or fetus;
- (7) "Institution" means any establishment, public or private, which provides inpatient or out-patient medical, surgical, or diagnostic care or

treatment or nursing, custodial, or domiciliary care, or to which persons are committed by law;

(8) "Live birth" means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, which, after the expulsion or extraction, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached. Heartbeats shall be distinguished from transient cardiac contractions. Respirations shall be distinguished from fleeting respiratory efforts or gasps;

(9) "Physician" means a person authorized or licensed to practice medicine, chiropractic, or osteopathy pursuant to the laws of this state;

(10) "Registration" means the process by which vital records are completed, filed, and incorporated into the official records of the Division of Vital Records;

(11) "State registrar" means the State Registrar of Vital Records;

(12) "System of vital statistics" includes the registration, collection, preservation, amendment, and certification of vital records, the collection of other reports required by this chapter, and activities related thereto, including the tabulation, analysis, publication, and dissemination of vital statistics;

(13) "Vital records" means certificates or reports of birth, death, marriage, divorce, or annulment and the data related thereto;

(14) "Vital reports" means reports of fetal death and induced termination of pregnancy and data related thereto; and

(15) "Vital statistics" means the data derived from certificates and reports of birth, death, fetal death, induced termination of pregnancy, marriage, divorce, or annulment and related reports but does not mean or include the unintentional destruction of a fetus in performance of the surgical procedure dilation and curettage.

History. Acts 1981, No. 120, § 1;
A.S.A. 1947, § 82-501; Acts 1995, No.
1254, § 1.

CASE NOTES

Vital Records.

Reports of aborted pregnancies are vital reports whose disclosure is prohibited. Ar-

kansas Dep't of Health v. Westark Christian Action Council, 322 Ark. 440, 910 S.W.2d 199 (1995).

20-18-103. Applicability.

The provisions of this chapter also apply to all certificates of birth, death, marriage, divorce, or annulment and to reports of fetal death and induced termination of pregnancy previously received by the Division of Vital Records of the Division of Health of the Department of Health and Human Services and in the custody of the Division of Health of the Department of Health and Human Services.

History. Acts 1981, No. 120, § 28; A.S.A. 1947, § 82-528; Acts 1995, No. 1254, § 2.

20-18-104. [Repealed.]

Publisher's Notes. This section, concerning uniformity of interpretation, was repealed by Acts 1995, No. 1254, § 3. The

section was derived from Acts 1981, No. 120, § 30; A.S.A. 1947, § 82-529.

20-18-105. Penalties.

(a) The following persons shall be punished by a fine of not more than ten thousand dollars (\$10,000) or by imprisonment for not more than five (5) years, or both:

(1) Any person who willfully and knowingly makes any false statement in a certificate, record, or report required to be filed under this chapter, or in an application for an amendment thereof or in an application for a certified copy of a vital record or who willfully and knowingly supplies false information intending that the information be used in the preparation of any report, record, or certificate, or amendment thereof;

(2) Any person who without lawful authority and with the intent to deceive, makes, counterfeits, alters, amends, or mutilates any certificate, record, or report required to be filed under this chapter or a certified copy of the certificate, record, or report;

(3) Any person who willfully and knowingly obtains, possesses, uses, sells, furnishes, or attempts to obtain, possess, use, sell, or furnish to another for any purpose of deception any certificate, record, report, or certified copy thereof so made, counterfeited, altered, amended, or mutilated or which is false in whole or in part or which relates to the birth of another person, whether living or deceased;

(4) Any employee of the Division of Vital Records of the Division of Health of the Department of Health and Human Services or any office designated under § 20-18-203(b) who willfully and knowingly furnishes or processes a certificate of birth, or certified copy of a certificate of birth, with the knowledge or intention that it be used for the purposes of deception; and

(5) Any person who without lawful authority possesses any certificate, record, or report required by this chapter or a copy or certified copy of the certificate, record, or report knowing that it has been stolen or otherwise unlawfully obtained.

(b) The following persons shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one (1) year, or both:

(1) Any person who willfully and knowingly refuses to provide information required by this chapter or regulations adopted pursuant to this chapter;

(2) Any person who willfully and knowingly transports or accepts for transportation, interment, or other disposition, a dead body without an accompanying permit as provided in this chapter; or

(3) Any person who willfully and knowingly neglects or violates any of the provisions of this chapter or refuses to perform any of the duties imposed upon him or her by this chapter.

History. Acts 1981, No. 120, § 27; A.S.A. 1947, § 82-527; Acts 1995, No. 1254, § 4.

SUBCHAPTER 2 — ADMINISTRATION

SECTION.

20-18-201. Division of Vital Records.

20-18-202. Regulatory powers of the State Board of Health.

SECTION.

20-18-203. State Registrar of Vital Records.

Publisher's Notes. For Comments regarding the Model State Vital Statistics Act, see Commentaries Volume B.

Effective Dates. Acts 1981, No. 120, § 33; Feb. 19, 1981. Emergency clause provided: "It is hereby found and declared by the General Assembly that the existing vital statistics act are outdated, with the result that it is impossible to properly and efficiently administer the vital statistics laws; that because of such inadequacy, the State is not having its health and related needs properly taken care of, all of which is to the detriment of the public health, safety, and welfare; and that only by the immediate operation of this Act can these conditions be alleviated. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health, and safety, shall take effect and be in full force from and after its passage and approval."

Acts 1997, No. 179, § 38; Feb. 17, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint

Interim Committee on Public Health, Welfare, and Labor and in its place established the House Interim Committee and Senate Interim Committee on Public Health, Welfare, and Labor; that various sections of the Arkansas Code refer to the Joint Interim Committee on Public Health, Welfare, and Labor and should be corrected to refer to the House and Senate Interim Committees on Public Health, Welfare, and Labor; that this act so provides; and that this act should go into effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

20-18-201. Division of Vital Records.

(a) There is established in the Division of Health of the Department of Health and Human Services a Division of Vital Records which shall install, maintain, and operate the only system of vital statistics throughout this state.

(b) The Division of Vital Records shall be provided with sufficient staff, suitable offices, and other resources for the proper administration

of the statewide system of vital statistics and for the preservation and security of its official records.

History. Acts 1981, No. 120, § 2; A.S.A. 1947, § 82-502; Acts 1995, No. 1254, § 5.

20-18-202. Regulatory powers of the State Board of Health.

The State Board of Health may adopt, amend, and repeal rules and regulations for the purpose of carrying out this chapter. All rules and regulations adopted under this chapter shall be reviewed by the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor or appropriate subcommittees of the committees.

History. Acts 1981, No. 120, § 3; A.S.A. 1947, § 82-503; Acts 1995, No. 1254, § 6; 1997, No. 179, § 29.

CASE NOTES

Construction.

Arkansas Board of Health had the authority to adopt rules and regulations and gave the state registrar the power to authorize the disinterment of a dead body; thus, decedent's children, as the de-

cedent's next of kin, should not have been prevented from proceeding with disinterment of their father and having him buried next to the children's mother. *Alford v. Hale*, 85 Ark. App. 23, 145 S.W.3d 389 (2004).

20-18-203. State Registrar of Vital Records.

(a) The Director of the Division of Health of the Department of Health and Human Services shall appoint the State Registrar of Vital Records.

(b)(1) The state registrar shall:

(A) Administer and enforce this chapter and the rules and regulations issued under this chapter and issue instructions for the efficient administration of the statewide system of vital statistics;

(B) Direct and supervise the statewide system of vital statistics and the Division of Vital Records of the Division of Health of the Department of Health and Human Services and be custodian of its records;

(C) Direct, supervise, and control the activities of all persons when they are engaged in activities pertaining to the operation of the statewide system of vital statistics;

(D) Conduct training programs to promote uniformity of policy and procedures throughout the state in matters pertaining to the system of vital statistics;

(E) Prescribe, with the approval of the State Board of Health, furnish, and distribute forms required by this chapter and the regulations issued under this chapter or prescribe such other means

for transmission of data as will accomplish the purpose of complete and accurate registration;

(F) Prepare and publish in a timely manner annual reports of vital statistics of this state and such other reports as may be required by the board; and

(G) Provide in a timely manner to local health agencies, and for public releases, copies of data derived from certificates and reports required under this chapter, as deemed necessary for local health planning and program activities. The state registrar shall establish a schedule with each local health agency for transmittal of the copies or data.

(2) The state registrar may establish or designate additional offices in the state to aid in the efficient administration of the statewide system of vital statistics.

(3) The state registrar may delegate functions and duties vested in him or her to employees of the Division of Vital Records and to employees of an office established or designated under subdivision (b)(2) of this section.

(4)(A) The state registrar shall provide copies of certificates or reports required under this chapter or data derived from such certificates or reports, as deemed necessary, to the Center for Health Statistics of the Division of Health of the Department of Health and Human Services for statistical analysis and presentation.

(B) The state registrar shall establish a schedule for the transmittal with the Division of Vital Records.

(C) The records or data shall remain the property of the Division of Vital Records, and the uses which may be made of the records or data shall be governed by the state registrar.

(D) A schedule for the disposition of the certificates, reports, or data provided under this subdivision (b)(4) shall be established by the state registrar.

(5) To protect the integrity of vital records and to prevent the fraudulent use of birth certificates of deceased persons, the state registrar may match birth and death certificates, in accordance with regulations, which require proof beyond a reasonable doubt of the fact of death and to post the facts of death to the appropriate birth certificate and mark the birth certificate "Deceased". Copies issued from birth certificates of deceased persons shall be similarly marked.

History. Acts 1981, No. 120, §§ 4, 5; A.S.A. 1947, §§ 82-504, 82-505; Acts 1989, No. 396, § 1; 1995, No. 1254, § 7; 1995, No. 1295, § 1.

A.C.R.C. Notes. Pursuant to § 1-2-207, this section is set out above as amended by Acts 1995, No. 1295. This section was also amended by Acts 1995, No. 1254, § 7, to read as follows:

"(a) The Director of the Department of

Health shall appoint the State Registrar of Vital Records.

"(b)(1) The state registrar shall:

"(A) Administer and enforce the provisions of this chapter and the rules and regulations issued hereunder and issue instructions for the efficient administration of the statewide system of vital statistics;

"(B) Direct and supervise the statewide

system of vital statistics and the Division of Vital Records and be custodian of its records;

“(C) Direct, supervise, and control the activities of all persons when they are engaged in activities pertaining to the operation of the statewide system of vital statistics;

“(D) Conduct training programs to promote uniformity of policy and procedures throughout the state in matters pertaining to the system of vital statistics;

“(E) Prescribe, with the approval of the board, furnish, and distribute forms required by this chapter and the regulations issued hereunder or prescribe such other means for transmission of data as will accomplish the purpose of complete and accurate registration;

“(F) Prepare and publish reports of vital statistics of this state and such other reports as may be required by the board;

“(G) Provide to local health agencies copies of or data derived from certificates and reports required under this chapter, as deemed necessary for local health planning and program activities.

“(i) The State Registrar shall establish a schedule with each local health agency for transmittal of the copies or data.

“(ii) The copies or data shall remain the property of the Division of Vital Records, and the uses which may be made of them shall be governed by the State Registrar.

“(2) The state registrar may establish or designate additional offices in the state to aid in the efficient administration of the statewide system of vital statistics.

“(3) The state registrar may delegate functions and duties vested in him or her to employees of the Division of Vital Records and to employees of an office established or designated under subdivision (b)(2) of this section.

“(4) The state registrar shall provide copies of certificates or reports required under this chapter or data derived from such certificates or reports, as deemed necessary, to the Division of Health Statistics for statistical analysis and presentation.

“(A) The state registrar shall establish a schedule for the transmittal with the division.

“(B) The records or data shall remain the property of the Division of Vital Records and the uses which may be made of the records or data shall be governed by the state registrar.

“(C) A schedule for the disposition of the certificates, reports, or data provided under subdivision (b)(4) of this section shall be established by the state registrar.

“(5) To protect the integrity of vital records and to prevent the fraudulent use of birth certificates of deceased persons, the State Registrar may match birth and death certificates, in accordance with regulations, which require proof beyond a reasonable doubt of the fact of death and to post the facts of death to the appropriate birth certificate and mark the birth certificate ‘Deceased’. Copies issued from birth certificates of deceased persons shall be similarly marked.”

SUBCHAPTER 3 — RECORDS GENERALLY

SECTION.

- 20-18-301. Content of certificates and reports.
- 20-18-302. Persons required to keep records.
- 20-18-303. Duty to furnish information.
- 20-18-304. Disclosure of information prohibited — Exceptions.
- 20-18-305. Issuance of certified copies

SECTION.

- and data from the system of vital statistics.
- 20-18-306. Fees for certified copies.
- 20-18-307. Amendment of vital records and reports.
- 20-18-308. Reproductions of records and files.

Publisher’s Notes. For Comments regarding the Model State Vital Statistics Act, see Commentaries Volume B.

Effective Dates. Acts 1981, No. 120, § 33: Feb. 19, 1981. Emergency clause

provided: “It is hereby found and declared by the General Assembly that the existing vital statistics act are outdated, with the result that it is impossible to properly and efficiently administer the vital statistics

laws; that because of such inadequacy, the State is not having its health and related needs properly taken care of, all of which is to the detriment of the public health, safety, and welfare; and that only by the immediate operation of this Act can these

conditions be alleviated. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health, and safety, shall take effect and be in full force from and after its passage and approval."

20-18-301. Content of certificates and reports.

(a) In order to promote and maintain nationwide uniformity in the system of vital statistics, the forms of certificates, reports, and records required by this chapter or by regulations adopted under this chapter shall include as a minimum the items recommended by the federal agency responsible for national vital statistics.

(b) Each certificate, report, record, and form required by this chapter shall be prepared in the format approved by the State Registrar of Vital Records.

(c) All vital records and reports shall contain the date of filing.

(d) Information required in certificates, reports, records, or forms authorized by this chapter may be filed, verified, registered, and stored by photographic, electronic, or other means as prescribed by the state registrar.

History. Acts 1981, No. 120, § 6;
A.S.A. 1947, § 82-506; Acts 1995, No.
1254, § 8.

20-18-302. Persons required to keep records.

(a)(1) Every person in charge of an institution as defined in this chapter shall keep a record of personal data concerning each person admitted or confined to the institution.

(2) The record shall include such information as required by the certificates of birth and death and the reports of fetal death and induced termination of pregnancy forms required by this chapter.

(3) The record shall be made at the time of admission from information provided by the person being admitted or confined, but when it cannot be so obtained, the information shall be obtained from relatives or other persons acquainted with the facts. The name and address of the person providing the information shall be a part of the record.

(b) When a dead body is released or disposed of by an institution, the person in charge of the institution shall keep a record showing the name of the decedent, date of death, name and address of the person to whom the body or fetus is released, and date of removal from the institution or if finally disposed of by the institution, the date, place, and manner of disposition shall be recorded.

(c) A funeral director, embalmer, sexton, or other person who removes from the place of death or transports or finally disposes of a dead body or fetus, in addition to filing any certificate or other report required by this chapter or regulations promulgated under this chapter,

shall keep a record which shall identify the body, and such information pertaining to the receipt, removal, and delivery of the body as may be required in regulations adopted by the State Board of Health.

(d) Records maintained under this section shall be retained for a period of not less than one (1) year and shall be made available for inspection by the State Registrar of Vital Records or his or her representative upon demand.

History. Acts 1981, No. 120, § 25; A.S.A. 1947, § 82-525; Acts 1995, No. 1254, § 9.

20-18-303. Duty to furnish information.

(a) Any person having knowledge of the facts shall furnish such information as he or she may possess regarding any birth, death, spontaneous fetal death, induced termination of pregnancy, marriage, divorce, or annulment upon demand of the State Registrar of Vital Records.

(b) Any person or institution that in good faith provides information required by this chapter or regulations promulgated under this chapter shall not be subject to any action for damages.

(c) Not later than the tenth day of the month following the month of occurrence, the administrator of each institution shall send to the Division of Vital Records of the Division of Health of the Department of Health and Human Services a list showing all births and deaths occurring in that institution during the preceding month. The lists shall be on forms approved by the state registrar.

(d) Not later than the tenth day of the month following the month of occurrence, each funeral director shall send to the Division of Vital Records a list showing all dead bodies embalmed or otherwise prepared for final disposition or dead bodies finally disposed of by the funeral director during the preceding month. The list shall be made on forms provided by the state registrar.

History. Acts 1981, No. 120, § 26; A.S.A. 1947, § 82-526; Acts 1995, No. 1254, § 10.

20-18-304. Disclosure of information prohibited — Exceptions.

(a) To protect the integrity of vital records and vital reports, to ensure their proper use, and to ensure the efficient and proper administration of the system of vital statistics, it shall be unlawful for any person to permit inspection of or to disclose information contained in vital records or vital reports or to copy or issue a copy of all or part of any record or report except as authorized by this chapter and by regulation or by order of a court of competent jurisdiction.

(b)(1) The State Board of Health may authorize by regulation the disclosure of information contained in vital records for research purposes.

(2) The regulations shall provide for adequate standards of security and confidentiality of vital records and vital reports.

(3)(A) Disclosure of information which may identify any person or institution named in any vital record or vital report may be made only pursuant to regulations which require submission of written requests for information by researchers and execution of agreements that protect the confidentiality of the information provided.

(B) The agreements shall prohibit the release by the researcher of any information that might identify any person or institution other than releases that may be provided for in the agreement.

(4) Nothing in this section prohibits the release of information or data which would not identify any person or institution named in a vital record or vital report.

(c)(1) Appeals from decisions of custodians of vital records or vital reports designated under § 20-18-203(b) who refuse to disclose information from records or reports as prescribed by this section and the regulations issued under this section shall be made to the State Registrar of Vital Records, whose decision shall be binding upon such custodians.

(2) Within three (3) working days of the receipt of an appeal of a decision of a custodian of a vital record or vital report designated under § 20-18-203(b), the state registrar shall issue a decision on the appeal.

(d)(1) The state registrar shall send to the county assessor of each county within this state a monthly report listing the residents of that county who have died.

(2) The report shall be sent to each county assessor by:

(A) Electronic mail;

(B) Facsimile; or

(C) The United States Postal Service.

History. Acts 1981, No. 120, § 22; A.S.A. 1947, § 82-522; Acts 1995, No. 1254, § 11; 1995, No. 1295, § 2; 2005, No. 1892, § 3.

A.C.R.C. Notes. Pursuant to § 1-2-207, this section is set out above as amended by Acts 1995, No. 1295. This section was also amended by Acts 1995, No. 1254, § 11, to read as follows:

“(a) To protect the integrity of vital records and vital reports, to insure their proper use, and to insure the efficient and proper administration of the system of vital statistics, it shall be unlawful for any person to permit inspection of or to disclose information contained in vital records or vital reports or to copy or issue a copy of all or part of any record or report except as authorized by this chapter and by regulation or by order of a court of competent jurisdiction. The regulations shall provide for adequate standards of

security and confidentiality of vital records and vital reports.

“(b) The board may authorize by regulation the disclosure of information contained in vital records for research purposes. Disclosure of information which may identify any person or institution named in any vital record or vital report may be made only pursuant to regulations which require submission of written requests for information by researchers and execution of agreements that protect the confidentiality of the information provided. The agreements shall prohibit the release by the researcher of any information that might identify any person or institution other than releases that may be provided for in the agreement. For purposes of this act ‘research’ means a systematic investigation designed primarily to develop or contribute to generalizable knowledge. Nothing in this act pro-

hibits the release of information or data which would not identify any person or institution named in a vital record or vital report.

“(c) Appeals from decisions of custodians of vital records or vital reports designated under 20-18-203(b), who refuse to disclose information from records or re-

ports as prescribed by this section and the regulations issued hereunder, shall be made to the state registrar, whose decision shall be binding upon such custodians.”

Amendments. The 2005 amendment added (d).

RESEARCH REFERENCES*

Ark. L. Rev. Watkins, Access to Public Records Under the Arkansas Freedom of Information Act, 37 Ark. L. Rev. 741.

CASE NOTES

Disclosure Prohibited.

Reports of aborted pregnancies are vital reports under § 20-18-102 and their dis-

closure is prohibited. *Arkansas Dep’t of Health v. Westark Christian Action Council*, 322 Ark. 440, 910 S.W.2d 199 (1995).

20-18-305. Issuance of certified copies and data from the system of vital statistics.

In accordance with § 20-18-304 and the regulations adopted pursuant to § 20-18-304:

(1) The State Registrar of Vital Records and other custodians of vital records designated by the state registrar under § 20-18-203(b)(2) shall upon receipt of written application issue a certified copy of a vital record in his or her custody or a part thereof to the registrant, his or her spouse, child, parent, or guardian or their respective authorized designated representative. Others may be authorized to obtain certified copies when they demonstrate that the record is needed for the determination or protection of his or her personal or property rights. The State Board of Health may adopt regulations to further define those who may obtain copies of vital records filed under this chapter;

(2) All forms and procedures used in the issuance of certified copies of vital records in the state shall be uniform and approved by the state registrar. All certified copies issued shall have security features that deter persons from altering, counterfeiting, duplicating, or simulating the document;

(3) Each copy or abstract issued shall show the date of registration and copies or abstracts issued from records marked “DELAYED”, “AMENDED”, or “CERTIFICATE OF FOREIGN BIRTH” shall be similarly marked and show the effective date;

(4) A certified copy or other copy of a death certificate containing cause of death information shall not be issued except as follows:

(A) Upon specific request of a spouse, child, parent, or other next of kin of the decedent or an authorized representative;

(B) When a documented need for the cause of death to establish a legal right or claim has been demonstrated;

(C) When the request for the copy is made by or on the behalf of an organization that provides benefits to the decedent's survivors or beneficiaries;

(D) Upon specific request by local, state, or federal agencies for research or administrative purposes approved by the state registrar;

(E) When needed for research activities approved by the state registrar; or

(F) Upon receipt of an order from a court of competent jurisdiction ordering the release;

(5) A certified copy of a vital record or any part thereof issued in accordance with subdivision (1) of this section shall be considered for all purposes the same as the original and shall be prima facie evidence of the facts stated therein, provided that the evidentiary value of a certificate or record filed more than one (1) year after the event, or a record which has been amended, or a certificate of foreign birth shall be determined by the judicial or administrative body or official before whom the certificate is offered as evidence;

(6) The federal agency responsible for national vital statistics may be furnished such copies or data from the system of vital statistics as it may require for national statistics. The state registrar shall enter into an agreement with the federal agency that specifies the statistical or research purposes for which the records, reports, or data may be used. The agreement shall also set forth the support to be provided by the federal agency for the collection, processing, and transmission of such records, reports, or data. Upon written request of the federal agency, the state registrar may approve in writing additional statistical or research uses of the records, reports, or data supplied under the agreement;

(7) Upon request, federal, state, local, and other public government agencies may be furnished copies of records, reports, or data, provided that the copies or data shall be used solely in the conduct of their official duties;

(8)(A)(i) By agreement, the state registrar may transmit copies of records and other reports required by this chapter to offices of vital statistics outside this state when the records or other reports relate to residents of those jurisdictions or persons born in those jurisdictions.

(ii) The agreement shall require that the transcripts be used for statistical and administrative purposes only as specified in the agreement.

(iii) The agreement shall provide instruction for the proper retention and disposition of copies.

(B) Copies received from other jurisdictions by the Division of Vital Records of the Division of Health of the Department of Health and Human Services shall be handled in the same manner as prescribed in this subdivision (8);

(9) When one hundred (100) years have elapsed after the date of birth or fifty (50) years have elapsed after the date of death, marriage, divorce, or annulment, the records of these events in the custody of the

state registrar shall become available to the public without restriction, in accordance with regulations which shall provide for the continued safekeeping of the records;

(10) Nothing in this section shall be construed to permit disclosure of information contained in the "Information for Medical and Health Use Only" section of the birth certificate or the "Information for Statistical Purposes Only" section of the certificate of marriage or certificate of divorce or annulment, unless specifically authorized by the state registrar for statistical or research purposes;

(11) No person shall prepare or issue any certificate which purports to be an original, certified copy, or copy of a vital record except as authorized in this chapter or regulations adopted pursuant to this chapter;

(12) When the state registrar receives information that a certificate may have been registered through fraud or misrepresentation, he or she shall withhold issuance of any copy of that certificate pending an administrative hearing to determine whether fraud or misrepresentation has occurred. The state registrar shall offer the registrant or the registrant's authorized representative notice and opportunity to be heard. If upon conclusion of the hearing no fraud or misrepresentation is found, copies may be issued. If upon conclusion of the hearing, fraud or misrepresentation is found, the state registrar shall remove the certificate from the file. The certificate and evidence shall be retained but shall not be subject to inspection or copying, except upon order of a court of competent jurisdiction or by the state registrar for purposes of administering the vital statistics program.

History. Acts 1981, No. 120, § 23; A.S.A. 1947, § 82-523; Acts 1995, No. 1254, § 12.

CASE NOTES

Evidence.

Certified copy of birth certificate was prima facie evidence of age. *Barnes v. Rebsamen Motors, Inc.*, 221 Ark. 791, 255 S.W.2d 961 (1953) (decision under prior law).

Certified death certificate was inadmissible for the purpose of getting before the jury the coroner's opinion that the death was due to suicide. *Dortch v. New York*

Life Ins. Co., 268 F.2d 149 (8th Cir. 1959) (decision under prior law).

The issue of whether the death of a person was suicide or accidental was not a "fact" within meaning of law providing that a certified copy of a death certificate would have been prima facie evidence of the "facts" stated therein. *Dortch v. New York Life Ins. Co.*, 268 F.2d 149 (8th Cir. 1959) (decision under prior law).

20-18-306. Fees for certified copies.

(a)(1) All fees for certified copies of vital records or reports under this chapter are listed in § 20-7-123.

(2)(A) However, certified copies of the records shall be furnished to veterans or their dependents without costs when the Department of Veterans Affairs requires certified copies of the records.

(B) Any veteran or his or her dependents shall make application and shall execute an unnotarized affidavit that he or she is a veteran or a dependent of a veteran in order to obtain the free certified copy of any record.

(C) Any person who falsely or fraudulently makes an application and unnotarized affidavit that he or she is a veteran or a dependent of a veteran when the person is not a veteran or a dependent of a veteran shall be guilty of a misdemeanor. Upon conviction, the person shall be subject to a fine of not less than fifty dollars (\$50.00) nor more than two hundred fifty dollars (\$250) or imprisonment for not less than thirty (30) days nor more than six (6) months, or both fine and imprisonment.

History. Acts 1981, No. 120, § 24; 524; Acts 1989, No. 396, § 5; 1995, No. 1985, No. 351, §§ 3, 4; A.S.A. 1947, § 82- 1254, § 13.

20-18-307. Amendment of vital records and reports.

(a) A certificate, report, or record registered under this chapter may be amended only in accordance with this chapter and regulations adopted by the State Board of Health to protect the integrity and accuracy of vital records and reports.

(b)(1) A certificate, report, or record that is amended under this section shall be marked "AMENDED". The date of amendment, the identity of the person making the amendment, and a summary description of the evidence submitted in support of the amendment shall be made a part of the record or report.

(2) The board shall prescribe by regulation the conditions under which additions or minor corrections may be made to certificates or records within one (1) year after the date of the event without the certificate's or record's being considered as amended.

(c) Upon receipt of a certified copy of an order of a court of competent jurisdiction changing the name of a person born in this state and upon request of the person or his or her parents, guardian or legal representative, the State Registrar of Vital Records shall amend the certificate of birth to show the new name.

(d) Upon receipt of a certified copy of an order of a court of competent jurisdiction indicating that the sex of an individual born in this state has been changed by surgical procedure and that the individual's name has been changed, the certificate of birth of the individual shall be amended accordingly.

(e) When an applicant does not submit the minimum documentation required in the regulations for amending a vital record or when the state registrar has cause to question the validity or adequacy of the applicant's sworn statements or the documentary evidence and if the deficiencies are not corrected, the state registrar shall not amend the vital record and shall advise the applicant of the reason for this action. The state registrar shall advise the applicant of his or her right of appeal to a court of competent jurisdiction.

(f) When a certificate or record is amended under this section by the state registrar, the state registrar shall report the amendment to any other custodian of the vital record, and the record shall be amended accordingly.

(g) When an amendment is made to a certificate of marriage, divorce, or annulment by the local official issuing the marriage license or the court entering the decree of divorce or annulment, copies of the amendment shall be forwarded to the state registrar.

History. Acts 1981, No. 120, § 20; A.S.A. 1947, § 82-520; Acts 1995, No. 1254, § 14.

20-18-308. Reproductions of records and files.

(a) To preserve vital records, the State Registrar of Vital Records may prepare typewritten, photographic, electronic, or other reproductions of original records and files in the Division of Vital Records of the Division of Health of the Department of Health and Human Services.

(b) When verified and approved by the state registrar, the reproductions shall be accepted as the original records.

(c) The documents from which permanent reproductions have been made may be disposed of as provided by regulation.

History. Acts 1981, No. 120, § 21; A.S.A. 1947, § 82-521; Acts 1995, No. 1254, § 15.

SUBCHAPTER 4 — BIRTHS AND ADOPTIONS

SECTION.

- 20-18-401. Birth registration generally.
- 20-18-402. Delayed registration of birth.
- 20-18-403. Judicial procedure to register birth.
- 20-18-404. Infants of unknown parentage.
- 20-18-405. [Repealed.]

SECTION.

- 20-18-406. New certificates.
- 20-18-407. Social Security account information of parents.
- 20-18-408. Notice to parents regarding affidavits of paternity.
- 20-18-409. Disclosure of affidavits.

Effective Dates. Acts 1981, No. 120, § 33: Feb. 19, 1981. Emergency clause provided: "It is hereby found and declared by the General Assembly that the existing vital statistics act are outdated, with the result that it is impossible to properly and efficiently administer the vital statistics laws; that because of such inadequacy, the State is not having its health and related needs properly taken care of, all of which is to the detriment of the public health, safety, and welfare; and that only by the

immediate operation of this Act can these conditions be alleviated. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health, and safety, shall take effect and be in full force from and after its passage and approval."

Acts 1989, No. 805, § 2: Nov. 25, 1990.

Publisher's Notes. For Comments regarding the Model State Vital Statistics Act, see Commentaries Volume B.

RESEARCH REFERENCES

C.J.S. 39A C.J.S., Health & E., § 74.

20-18-401. Birth registration generally.

(a) A certificate of birth for each live birth which occurs in this state shall be filed with the Division of Vital Records of the Division of Health of the Department of Health and Human Services, or as otherwise directed by the State Registrar of Vital Records, within ten (10) days after the birth and shall be registered if it has been completed and filed in accordance with this section.

(b) When a birth occurs in an institution or en route thereto, the person in charge of the institution or his or her authorized designee shall obtain the personal data, prepare the certificate, certify that the child was born alive at the place, time, and date stated on the certificate either by signature or in an approved electronic process, and file the certificate as directed in subsection (a) of this section. The physician or other person in attendance shall provide the medical information required by the certificate within seventy-two (72) hours after the birth.

(c) When a birth occurs outside an institution:

(1) The certificate shall be prepared and filed by one (1) of the following in the indicated order of priority:

(A) The physician in attendance at or immediately after the birth, or in the absence of such a person;

(B) Any other person in attendance at or immediately after the birth, or in the absence of such a person;

(C) The father, the mother, or in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred; and

(2) The Division of Vital Records shall determine what evidence may be required to establish the fact of birth.

(d) When a birth occurs on a moving conveyance within the United States and the child is first removed from the conveyance in this state, the birth shall be registered in this state and the place where it is first removed shall be considered the place of birth. When a birth occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the child is first removed from the conveyance in this state, the birth shall be registered in this state, but the certificate shall show the actual place of birth insofar as can be determined.

(e) For the purposes of birth registration, the mother is deemed to be the woman who gives birth to the child, unless otherwise provided by state law or determined by a court of competent jurisdiction prior to the filing of the birth certificate. The information about the father shall be entered as provided in subsection (f) of this section.

(f)(1) If the mother was married at the time of either conception or birth or between conception and birth the name of the husband shall be entered on the certificate as the father of the child, unless:

(A) Paternity has been determined otherwise by a court of competent jurisdiction; or

(B) The mother executes an affidavit attesting that the husband is not the father and that the putative father is the father, and the putative father executes an affidavit attesting that he is the father and the husband executes an affidavit attesting that he is not the father. Affidavits may be joint or individual or a combination thereof, and each signature shall be individually notarized. In such event, the putative father shall be shown as the father on the certificate and the parents may give the child any surname they choose.

(2) If the mother was not married at the time of either conception or birth or between conception and birth, the name of the father shall not be entered on the certificate of birth without an affidavit of paternity signed by the mother and the person to be named as the father. The parents may give the child any surname they choose.

(3) In any case in which paternity of a child is determined by a court of competent jurisdiction, the name of the father and surname of the child shall be entered on the certificate of birth in accordance with the finding and order of the court.

(4) If the father is not named on the certificate of birth, no other information about the father shall be entered on the certificate.

(g) Either of the parents of the child or other informant shall verify by signature or electronic process the accuracy of the personal data to be entered on the certificate in time to permit the filing of the certificate within the ten (10) days prescribed in this section.

(h) Certificates of birth filed after ten (10) days but within one (1) year from the date of birth shall be registered on the standard form of live birth certificate in the manner prescribed in this section. Such certificates shall not be marked "DELAYED". The state registrar may require additional evidence in support of the facts of birth.

History. Acts 1981, No. 120, § 7;
A.S.A. 1947, § 82-507; Acts 1989, No. 396,
§ 2; 1995, No. 1254, § 16.

RESEARCH REFERENCES

UALR L.J. Survey, Family Law, 12
UALR L.J. 631.

CASE NOTES

Names of Father and Child.

Subdivision (f)(3) merely states that the full name of the father and the surname of the child shall be entered on the birth certificate "in accordance with the finding and order of the court"; nothing in the language suggests the two must be the same. *McCullough v. Henderson*, 304 Ark. 689, 804 S.W.2d 368 (1991).

Subdivision (f)(3) does not direct that the surname of the child become that of the father. *Reaves v. Herman*, 309 Ark. 370, 830 S.W.2d 860 (1992).

A finding of paternity under this section does not mean that the surname of the child should necessarily be that of the father. *Mathews v. Oglesby*, 59 Ark. App. 127, 952 S.W.2d 684 (1997).

Cited: McCullough v. Henderson, 304 Ark. 689, 804 S.W.2d 368 (1991); Huffman v. Fisher, 63 Ark. App. 174, 976 S.W.2d 401 (1998), 337 Ark. 58, 987 S.W.2d 269, (1999); Carter v. Reddell, 75 Ark. App. 8, 52 S.W.3d 506 (2001).

20-18-402. Delayed registration of birth.

(a) When the certificate of birth of a person born in the state has not been filed within one (1) year, a delayed certificate of birth may be filed in accordance with regulations of the State Board of Health. No delayed certificate shall be registered until the evidentiary requirements as specified in regulations have been met.

(b) The birth shall be registered on a delayed certificate of birth form and the form shall show on its face the date of registration. The delayed certificate shall contain a summary statement of the evidence submitted in support of the delayed registration.

(c) No delayed certificate of birth shall be registered for a deceased person.

(d)(1) When an applicant does not submit the minimum documentation required in the regulations for delayed registration or when the State Registrar of Vital Records has cause to question the validity or adequacy of the applicant's sworn statement or the documentary evidence and, if the deficiencies are not corrected, the state registrar shall not register the delayed certificate of birth and shall advise the applicant of the reasons for this action. The state registrar shall further advise the applicant of his or her right of appeal to a court of competent jurisdiction.

(2) The board may by regulation provide for the dismissal of an application which is not actively prosecuted.

History. Acts 1981, No. 120, § 9; A.S.A. 1947, § 82-509; Acts 1995, No. 1254, § 17.

20-18-403. Judicial procedure to register birth.

(a) If the State Registrar of Vital Records refuses to file a certificate of birth under § 20-18-401 or § 20-18-402, a petition may be filed with a court of competent jurisdiction for an order establishing a record of the date and place of the birth and the parentage of the person whose birth is to be registered.

(b) The petition shall be made on a form prescribed and furnished or approved by the state registrar and shall allege:

(1) That the person for whom a delayed certificate of birth is sought was born in this state;

(2) That no certificate of birth of the person can be found in the Division of Vital Records of the Division of Health of the Department of Health and Human Services;

(3) That diligent efforts by the petitioner have failed to obtain the evidence required in accordance with § 20-18-401 or § 20-18-402 and regulations adopted pursuant § 20-18-401 or § 20-18-402;

(4) That the state registrar has refused to file a certificate of birth; and

(5) Such other allegations as may be required.

(c) The petition shall be accompanied by a statement of the state registrar made in accordance with § 20-18-401 or § 20-18-402 and all documentary evidence which was submitted to the state registrar in support of the registration.

(d) The court shall fix a time and place for hearing the petition and shall give the state registrar ten (10) days' notice of the hearing. The state registrar or his or her authorized representative may appear and testify in the proceeding.

(e) If the court finds from the evidence presented that the person for whom a certificate of birth is sought was born in the state, the court shall make findings as to the place and date of birth, parentage, and other findings as the case may require and shall issue an order on a form prescribed and furnished or approved by the state registrar to establish a court-ordered certificate of birth. This order shall include the birth data to be registered, a description of the evidence presented, and the date of the court's action.

(f) The clerk of court shall forward each order to the state registrar not later than the tenth day of the calendar month following the month in which it was entered. The order shall be registered by the state registrar and shall constitute the court-ordered certificate of birth.

History. Acts 1981, No. 120, § 10;
A.S.A. 1947, § 82-510; Acts 1995, No.
1254, § 18.

20-18-404. Infants of unknown parentage.

(a) Whoever assumes the custody of a live-born infant of unknown parentage shall report on a form and in a manner prescribed by the State Registrar of Vital Records within ten (10) days to the Division of Vital Records of the Division of Health of the Department of Health and Human Services the following information:

(1) The date and city or county, or both, of finding;

(2) Sex and approximate birth date of child;

(3) Name and address of the person or institution with whom the child has been placed for care;

(4) Name given to the child by the custodian of the child; and

(5) Other data required by the state registrar.

(b) The place where the child was found shall be entered as the place of birth.

(c) A report registered under this section shall constitute the certificate of birth for the child.

(d) If the child is identified and a certificate of birth is found or obtained, the report registered under this section shall be placed in a special file and shall not be subject to inspection except upon order of a court of competent jurisdiction or as provided by regulation.

History. Acts 1981, No. 120, § 8; A.S.A. 1947, § 82-508; Acts 1995, No. 1254, § 19.

20-18-405. [Repealed.]

A.C.R.C. Notes. Pursuant to § 1-2-207, the amendment to this section by Acts 1995, No. 1254, § 20, was superseded by the repeal of this section by Acts 1995, No. 1256, § 20.

Publisher's Notes. This section, con-

cerning court adoption reports, was repealed by Acts 1995, No. 1256, § 20, as amended by Acts 1995 (1st Ex. Sess.), No. 13, § 4. The section was derived from Acts 1981, No. 120, § 11; A.S.A. 1947, § 82-511; Acts 1995, No. 1254, § 20.

20-18-406. New certificates.

(a) The State Registrar of Vital Records shall establish a new certificate of birth for a person born in this state when he or she receives the following:

(1) A certificate of adoption as provided in § 20-18-405 [repealed], or a certificate of adoption prepared and filed in accordance with the laws of another state or foreign country, or a certified copy of the decree of adoption, together with the information necessary to identify the original certificate of birth and to establish a new certificate of birth. However, a new certificate of birth shall not be established if so requested by the court decreeing the adoption, the adoptive parents, or the adopted person;

(2) A request that a new certificate be established and any evidence, as required by regulation, proving that the person has been legitimated, or that a court of competent jurisdiction has determined the paternity of the person or that both parents have acknowledged the paternity of the person and request that the surname be changed from that shown on the original certificate.

(b) When a new certificate of birth is established, the actual city or county, or both, and date of birth shall be shown. The new certificate shall be substituted for the original certificate of birth. Thereafter, the original certificate and the evidence of adoption, paternity determination, or legitimation shall not be subject to inspection except upon order of an Arkansas court of competent jurisdiction or as provided by regulation.

(c) Upon receipt of a report of an amended certificate of adoption, the certificate of birth shall be amended as provided by regulation.

(d) Upon receipt of a report of annulment of adoption, the original certificate of birth shall be restored to its place in the files, and the new certificate and evidence shall not be subject to inspection except upon order of a court of competent jurisdiction or as provided by regulation.

(e) Upon written request of both parents and receipt of a sworn acknowledgment of paternity signed by both parents of a child born out of wedlock, the state registrar shall reflect paternity on the certificate of birth in the manner prescribed by regulation if paternity is not already shown on the certificate of birth.

(f)(1) Upon request, the state registrar shall prepare and register an Arkansas certificate of birth for a person born in a foreign country, who is not a citizen of the United States, and for whom a final order of adoption has been entered in a court of competent jurisdiction in Arkansas when he or she receives the following:

(A) A certificate of adoption as provided in § 20-18-405 [repealed];

(B) Proof of the date and place of the adopted child's birth;

(C) A request by the court decreeing the adoption, the adoptive parents, or the adopted person if eighteen (18) years of age or older.

(2) After preparation of the birth certificate in the new name of the adopted person, the state registrar shall seal and file the certificate of adoption. This certificate shall not be subject to inspection except upon order of a court of competent jurisdiction or as provided by regulation or as otherwise provided by state law.

(3) The birth certificate shall show the actual foreign country of birth and shall state that the certificate is not evidence of United States citizenship for the child for whom it is issued.

(g) If no certificate of birth is on file for the person for whom a new birth certificate is to be established under this section and the date and place of birth have not been determined in the adoption or paternity proceedings, a delayed certificate of birth shall be filed with the state registrar as provided in § 20-18-402 or § 20-18-403 before a new certificate of birth is established. The new certificate of birth shall be prepared on the delayed birth certificate form.

(h) When a new certificate of birth is established by the state registrar, all copies of the original certificate of birth in the custody of any other custodian of vital records in this state shall be sealed from inspection or forwarded to the state registrar as he or she shall direct.

History. Acts 1981, No. 120, § 12; Acts 1987, No. 219, § 1; 1995, No. 1254, 1985, No. 351, § 2; A.S.A. 1947, § 82-512; § 21.

20-18-407. Social Security account information of parents.

(a) Social Security account information of parents of a child born within this state shall be furnished to the Division of Vital Records of the Division of Health of the Department of Health and Human Services at the time of filing the certificate of birth, but such information shall not appear on the certificate.

(b) The Division of Vital Records shall make available the records of parent name and Social Security number to the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration for its use in the establishment of paternity or the enforcement of child support orders through electronic transfer mechanism. Such a disclosure shall constitute an exception to the prohibitions within § 20-18-304.

(c) Information obtained by the office pursuant to this section may be used in an action or proceeding before any court, administrative tribunal, or other body for the purpose of establishing a child support

obligation, collecting child support, or locating individuals owing the obligation.

History. Acts 1989, No. 805, § 1; 1991, No. 474, § 1; 1995, No. 1184, § 32. enforcement Unit, powers to obtain information on noncustodial parent, § 9-14-208.

Cross References. Child Support En-

RESEARCH REFERENCES

UALR L.J. Survey — Family Law, 14
UALR L.J. 799.

20-18-408. Notice to parents regarding affidavits of paternity.

Upon the birth of a child to a woman who was unmarried at the time of either conception or birth or between conception and birth, the person responsible under § 20-18-401 for providing birth registration information shall:

(1) Provide an opportunity for the child's mother and natural father to complete an affidavit acknowledging paternity, to include such information as is required by the court to establish paternity and establish a child support obligation and to be filed with the Division of Vital Records of the Division of Health of the Department of Health and Human Services;

(2) Provide written information, furnished by the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, to the child's mother and natural father explaining the implications of signing an affidavit of paternity and parental rights and responsibilities; and

(3) Provide written information, furnished by the office, to the child's mother regarding the benefits of having her child's paternity established and the availability of paternity establishment services, including a request for support enforcement services.

History. Acts 1993, No. 928, § 2; 1995, No. 1254, § 22.

CASE NOTES

Applicability.

Although neither this section nor § 20-18-409 were in effect in 1990 when the "Affidavit of Birth Out of Wedlock" was signed, § 9-10-120(a) also allows a "simi-

lar acknowledgment" to suffice if it is executed during the child's minority. *Bean v. Office of Child Support Enforcement*, 340 Ark. 286, 9 S.W.3d 520 (2000).

20-18-409. Disclosure of affidavits.

(a) The hospital, birthing center, certified nurse practitioner, or licensed midwife shall make available to the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration completed affidavits of paternity. Such a disclosure shall constitute an exception to the general prohibition of § 20-18-304.

(b) Information obtained by the office pursuant to this section may be used in an action or proceeding before any court, administrative tribunal, or other body for the purpose of establishing a child support obligation or collecting the child support obligation.

History. Acts 1993, No. 928, § 2.

CASE NOTES

Applicability.

Although neither § 20-18-408 nor this section were in effect in 1990 when the "Affidavit of Birth Out of Wedlock" was signed, § 9-10-120(a) also allows a "simi-

lar acknowledgment" to suffice if it is executed during the child's minority. *Bean v. Office of Child Support Enforcement*, 340 Ark. 286, 9 S.W.3d 520 (2000).

SUBCHAPTER 5 — MARRIAGES, ANNULMENTS, AND DIVORCES

SECTION.

20-18-501. Marriage registration.

20-18-502. Divorce or annulment registration.

Publisher's Notes. For Comments regarding the Model State Vital Statistics Act, see Commentaries Volume B.

Effective Dates. Acts 1981, No. 120, § 33; Feb. 19, 1981. Emergency clause provided: "It is hereby found and declared by the General Assembly that the existing vital statistics act are outdated, with the result that it is impossible to properly and efficiently administer the vital statistics laws; that because of such inadequacy, the State is not having its health and related needs properly taken care of, all of which is to the detriment of the public health, safety, and welfare; and that only by the immediate operation of this Act can these conditions be alleviated. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health, and safety, shall take effect and be in full force from and after its passage and approval."

Acts 1995 (1st Ex. Sess.), No. 13, § 13: Oct. 23, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the current system of funding the state judicial system has created inequity in the level of judicial services available to the citizens of the state; and it is further determined that the current method of financing the state judicial system has become so complex as to make the administration of the system impossible, and the lack of reliable data on the current costs of the state judicial system prohibits any comprehensive change in the funding of the system at this time. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Am. Jur. 52 Am. Jur. 2d, Marriage, § 35.

C.J.S. 55 C.J.S., Marriage, § 35.

20-18-501. Marriage registration.

(a) A record of each marriage performed in this state shall be filed with the Division of Vital Records of the Division of Health of the Department of Health and Human Services and shall be registered if it has been completed and filed in accordance with this section.

(b) The official who issues the marriage license shall prepare the record on the form prescribed by the State Registrar of Vital Records upon the basis of information obtained from one (1) of the parties to be married.

(c) Every person who performs a marriage shall certify the fact of marriage and return the record to the official who issued the license within fifteen (15) days after the ceremony.

(d) Every official issuing marriage licenses shall complete and forward to the Division of Vital Records on or before the thirtieth day of each calendar month the records of marriages filed with him or her during the preceding calendar month.

(e) A marriage record not filed within the time prescribed by statute may be registered in accordance with regulations of the State Board of Health.

History. Acts 1981, No. 120, § 18; A.S.A. 1947, § 82-518; Acts 1995, No. 1254, § 23.

Cross References. Marriage a civil contract — Consent of parties, § 9-11-101 et seq.

20-18-502. Divorce or annulment registration.

(a)(1) For each divorce or annulment granted by any court in this state, a record shall be filed by the clerk of court with the Division of Vital Records of the Division of Health of the Department of Health and Human Services and shall be registered if it has been completed and filed in accordance with this section.

(2) The record shall be prepared on a form prescribed and furnished by the State Registrar of Vital Records by the petitioner or his or her legal representative and shall be presented to the clerk of court with the petition.

(3) In all cases, the completed record shall be a prerequisite to the entry of the decree.

(b) The clerk of court shall complete and forward to the Division of Vital Records on or before the thirtieth day of each calendar month the records of each divorce or annulment filed with him or her during the preceding calendar month.

History. Acts 1981, No. 120, § 19; A.S.A. 1947, § 82-519; Acts 1995, No. 1254, § 24; 1995, No. 1256, § 20; 1995 (1st Ex. Sess.), No. 13, § 4.

Cross References. Subsequent marriage before dissolution of prior marriage prohibited, § 9-12-101 et seq.

SUBCHAPTER 6 — DEATHS

SECTION.

20-18-601. Registration generally.

20-18-602. Delayed registration.

20-18-603. Registration of termination of pregnancy.

SECTION.

20-18-604. Final disposition of dead body or fetus.

Publisher's Notes. For Comments regarding the Model State Vital Statistics Act, see Commentaries Volume B.

Effective Dates. Acts 1981, No. 120, § 33: Feb. 19, 1981. Emergency clause provided: "It is hereby found and declared by the General Assembly that the existing vital statistics act are outdated, with the result that it is impossible to properly and efficiently administer the vital statistics laws; that because of such inadequacy, the

State is not having its health and related needs properly taken care of, all of which is to the detriment of the public health, safety, and welfare; and that only by the immediate operation of this Act can these conditions be alleviated. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health, and safety, shall take effect and be in full force from and after its passage and approval."

RESEARCH REFERENCES

Am. Jur. 22A Am. Jur. 2d, Death, § 349 et seq.

20-18-601. Registration generally.

(a)(1) A death certificate for each death which occurs in this state shall be filed with the Division of Vital Records of the Division of Health of the Department of Health and Human Services or as otherwise directed by the State Registrar of Vital Records within ten (10) days after death or the finding of a dead body and shall be registered if it has been completed and filed in accordance with this section.

(2) If the place of death is unknown but the body is found in this state, the death certificate shall be completed and filed in accordance with this section. The place where the body is found shall be shown as the place of death. If the date of death is unknown, it shall be determined by approximation. If the date cannot be determined by approximation, the date found shall be entered and identified as such.

(3)(A) When death occurs in a moving conveyance in the United States and the body is first removed from the conveyance in this state, the death shall be registered in this state, and the place where it is first removed shall be considered the place of death.

(B) When a death occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the body is first removed from the conveyance in this state, the death shall be registered in this state, but the certificate shall show the actual place of death insofar as can be determined.

(C) In all other cases, the place where death is pronounced shall be considered the place where death occurred.

(b) The funeral director or the person acting as the funeral director who first assumes custody of the dead body shall file the death certificate. He or she shall obtain the personal data from the next of kin or the best qualified person or source available and shall obtain the medical certification from the person responsible therefor, as set forth in subsection (c) of this section. The funeral director or the person acting as the funeral director shall provide a death certificate that contains sufficient information to identify the decedent to the certifier.

(c)(1) The medical certification shall be completed, signed, and returned to the funeral director within two (2) business days after receipt of the death certificate by the physician in charge of the patient's care for the illness or condition which resulted in death, except when inquiry is required by § 12-12-315, § 12-12-318, or § 14-15-301 et seq.

(2) In the absence of the physician, or with his or her approval, the certificate may be completed and signed by his or her associate physician, the chief medical officer of the institution in which death occurred, by the pathologist who performed an autopsy upon the decedent, or by a registered nurse as provided in subdivision (c)(2) of this section, provided the individual has access to the medical history of the case, views the deceased at or after death, and death is due to natural causes. The person completing the cause-of-death section of the certificate shall attest to its accuracy either by a signature or by approved electronic process.

(3) A registered nurse employed by the attending hospice may complete and sign the medical certification of death for a patient who is terminally ill, whose death is anticipated, who is receiving services from a hospice program certified under § 20-7-117, and who dies in a hospice inpatient program or as a hospice patient in a nursing home.

(4) If the hospice patient dies in the home, the registered nurse may make pronouncement of death. However, the county coroner and the chief law enforcement official of the county or municipality where death occurred shall be immediately notified in accordance with § 12-12-315.

(5) The Division of Health of the Department of Health and Human Services shall provide hospitals, nursing homes, and hospices with the appropriate death certificate forms which will be made available to the attending physicians, coroners, or other certifiers of death. When death occurs outside these health facilities, the funeral home shall provide the death certificate to the certifier.

(d) If the cause of death appears to be other than the illness or condition for which the deceased was being treated or if inquiry is required by either of the laws referred to in subsection (c) of this section, the case shall be referred to the office of the State Medical Examiner or coroner in the jurisdiction where the death occurred or the body was found for investigation to determine and certify the cause of death. If the State Medical Examiner or county coroner determines that the case does not fall within his or her jurisdiction, he or she shall within twenty-four (24) hours refer the case back to the physician for completion of the medical certification.

(e) When inquiry is required by either of the laws referred to in subsection (c) of this section, the State Medical Examiner or coroner in the jurisdiction where the death occurred or the body was found shall determine the cause of death and shall complete and sign the medical certification within forty-eight (48) hours after taking charge of the case.

(f) If the cause of death cannot be determined within forty-eight (48) hours after death, the medical certification shall be completed as provided by regulation. The attending physician or State Medical Examiner or county coroner shall give the funeral director or person acting as the funeral director notice of the reason for the delay, and final disposition of the body shall not be made until authorized by the attending physician or State Medical Examiner or county coroner.

(g) When a death is presumed to have occurred within this state but the body cannot be located, a death certificate may be prepared by the state registrar only upon receipt of an order of a court of competent jurisdiction, which shall include the finding of facts required to complete the death certificate. Such a death certificate shall be marked "PRESUMPTIVE" and shall show on its face the date of death as determined by the court and the date of registration and shall identify the court and the date of the decree.

(h) Upon receipt of autopsy results or other information that would change the information in the cause-of-death section of the death certificate from that originally reported, the certifier shall immediately file a supplemental report of cause of death with the Division of Vital Records in order to amend the record.

History. Acts 1981, No. 120, § 13; A.S.A. 1947, § 82-513; Acts 1989, No. 396, § 3; 1995, No. 311, § 1; 1995, No. 1254, § 25.

A.C.R.C. Notes. Pursuant to § 1-2-207, this section is set out above as amended by Acts 1995, No. 1254. This section was also amended by Acts 1995, No. 311, § 1, to read as follows: "(a) A death certificate for each death which occurs in this state shall be filed with the Division of Vital Records of the Department of Health or as otherwise directed by the state registrar within ten (10) days after death or as prescribed by regulations of the board. It shall be registered if it has been completed and filed in accordance with this section.

"(1)(A) If the place of death is unknown but the body is found in this state, the death certificate shall be completed and filed in accordance with this section.

"(B) The place where the body is found shall be shown as the place of death. If the date of death is unknown, it shall be determined by approximation.

"(2)(A) When death occurs in a moving conveyance in the United States and the body is first removed from the conveyance in this state, the death shall be registered in this state, and the place where it is first removed shall be considered the place of death.

"(B) When a death occurs on a moving conveyance while in international waters or air space or in a foreign country and the body is first removed from the conveyance in this state, the death shall be registered in this state, but the certificate shall show the actual place of death insofar as can be determined.

"(b) The funeral director or person acting as such who first assumes custody of the dead body shall file the death certificate. He shall obtain the personal data from the next of kin or the best qualified person or source available and shall obtain the medical certification from the person responsible therefor, as set forth below.

"(c) The medical certification shall be completed, signed, and returned to the

funeral director within two (2) business days after receipt of the death certificate by the physician in charge of the patient's care for the illness or condition which resulted in death, except when inquiry is required by § 12-12-315 or § 12-12-318.

"(1) In the absence of the physician, or with his approval, the certificate may be completed and signed by his associate physician, the chief medical officer of the institution in which death occurred, by the pathologist who performed an autopsy upon the decedent, or by a registered nurse as provided in subdivision (c)(2), provided the individual has access to the medical history of the case, views the deceased at or after death, and death is due to natural causes.

"(2) A registered nurse employed by the attending hospice may complete and sign the medical certification of death for a patient who is terminally ill, whose death is anticipated, who is receiving services from a hospice program certified under § 20-7-117, and who dies in a hospice inpatient program or as a hospice patient in a nursing home.

"(3) In the event the hospice patient dies in the home, the registered nurse may make pronouncement of death; however, the county coroner and the chief law enforcement official of the county or municipality where death occurred must be immediately notified in accordance with § 12-12-315.

"(4) The Department of Health shall provide hospitals, nursing homes and hospices with the appropriate death certificate forms which will be made available to the attending physicians, coroners, or other certifiers of death. When death occurs outside these health facilities, the funeral home will provide the death certificate to the certifier.

"(d) If the cause of death appears to be

other than the illness or condition for which the deceased was being treated, or if inquiry is required by either of the laws referred to in subsection (c) of this section, the case shall be referred to the office of the State Medical Examiner or county coroner for investigation to determine and certify the cause of death. If the State Medical Examiner or county coroner determines that the case does not fall within his jurisdiction, he shall within twenty-four (24) hours refer the case back to the physician for completion of the medical certification.

"(e) When inquiry is required by either of the laws referred to in subsection (c) of this section, the State Medical Examiner or county coroner shall determine the cause of death and shall complete and sign the medical certification within forty-eight (48) hours after taking charge of the case.

"(f) If the cause of death cannot be determined within forty-eight (48) hours after death, the medical certification shall be completed as provided by regulation. The attending physician or State Medical Examiner or county coroner shall give the funeral director, or person acting as such, notice of the reason for the delay, and final disposition of the body shall not be made until authorized by the attending physician or State Medical Examiner or county coroner.

"(g) When a death is presumed to have occurred within this state but the body cannot be located, a death certificate may be prepared by the state registrar upon receipt of an order of a court of competent jurisdiction, which shall include the finding of facts required to complete the death certificate. Such a death certificate shall be marked "Presumptive" and shall show on its face the date of registration and shall identify the court and the date of the decree."

20-18-602. Delayed registration.

(a) When a death occurring in this state has not been registered within the time period as prescribed by § 20-18-601, a certificate may be filed in accordance with regulations of the State Board of Health. The certificates shall be registered subject to such evidentiary requirements as the board shall by regulation prescribe to substantiate the alleged facts of death.

(b) When an applicant does not submit the minimum documentation required by regulation for delayed registration or when the State

Registrar of Vital Records has cause to question the validity or adequacy of the applicant's sworn statement or the documentary evidence, and if the deficiencies are not corrected, the state registrar shall not register the delayed certificate of death and shall advise the applicant of the reasons for this action and further advise the applicant of his or her right to appeal to a court of competent jurisdiction.

(c) Certificates of death registered one (1) year or more after the date of death shall be marked "DELAYED" and shall show on their face the date of the delayed registration.

History. Acts 1981, No. 120, § 14; A.S.A. 1947, § 82-514; Acts 1995, No. 1254, § 26.

20-18-603. Registration of termination of pregnancy.

(a)(1)(A) Each fetal death when the fetus weighs three hundred fifty grams (350 g) or more, or if weight is unknown, the fetus completed twenty (20) weeks' gestation or more, calculated from the date the last normal menstrual period began to the date of delivery, that occurs in this state shall be reported within five (5) days after delivery to the Division of Vital Records of the Division of Health of the Department of Health and Human Services or as otherwise directed by the State Registrar of Vital Records. All induced terminations of pregnancy shall be reported in the manner prescribed in subsection (b) of this section and shall not be reported as fetal deaths.

(B) When a dead fetus is delivered in an institution, the person in charge of the institution or his or her designated representative shall prepare and file the fetal death certificate.

(C) When a dead fetus is delivered outside an institution, the physician in attendance at or immediately after delivery shall prepare and file the fetal death certificate.

(D) When a fetal death required to be reported by this section occurs without medical attendance at or immediately after the delivery, or when inquiry is required by § 12-12-301 et seq. or § 14-15-301 et seq. or otherwise provided by law, the State Medical Examiner or coroner shall investigate the cause of fetal death and shall prepare and file the report within five (5) days.

(E) When a fetal death occurs in a moving conveyance and the fetus is first removed from the conveyance in this state or when a fetus is found in this state and the place of fetal death is unknown, the fetal death shall be reported in this state. The place where the fetus was first removed from the conveyance or the fetus was found shall be considered the place of fetal death.

(2) Spontaneous fetal deaths when the fetus has completed less than twenty (20) weeks of gestation and when the fetus weighs less than three hundred fifty grams (350 g) shall be reported as prescribed in subsection (b) of this section.

(b) Each induced termination of pregnancy which occurs in this state regardless of the length of gestation shall be reported to the Division of

Vital Records within five (5) days by the person in charge of the institution in which the induced termination of pregnancy was performed. If the induced termination of pregnancy was performed outside an institution, the attending physician shall prepare and file the report.

(c)(1) The reports required under this subsection are statistical reports to be used only for medical and health purposes and shall not be incorporated into the permanent official records of the system of vital statistics. A schedule for the disposition of these reports shall be provided for by regulation.

(2) Reports required under this section shall not include the name or other personal identification of the individual having an induced or spontaneous termination of pregnancy.

History. Acts 1981, No. 120, §§ 15, 16; 1983, No. 835, §§ 1, 2; A.S.A. 1947, §§ 82-515, 82-516; Acts 1995, No. 1254, § 27.

CASE NOTES

Cited: Arkansas Dep't of Health v. Westark Christian Action Council, 319 Ark. 288, 890 S.W.2d 582 (1995).

20-18-604. Final disposition of dead body or fetus.

(a) The funeral director or the person acting as the funeral director who first assumes custody of a dead body shall obtain authorization for final disposition of the body as provided in the regulations.

(b) Prior to final disposition of a dead fetus, irrespective of the duration of pregnancy, the funeral director, the person in charge of the institution, or other person assuming responsibility for final disposition of the fetus shall obtain from the parents authorization for final disposition on a form prescribed by the State Registrar of Vital Records.

(c) With the consent of the physician or State Medical Examiner or county coroner, who is to certify the cause of death, a dead body may be moved from the place of death for the purpose of being prepared for final disposition.

(d) An authorization for final disposition issued under the law of another state which accompanies a dead body or fetus brought into this state shall be authority for final disposition of the body or fetus in this state.

(e) Authorization for disinterment and reinterment shall be required prior to disinterment of a dead body or fetus. The authorization shall be issued by the state registrar to a licensed funeral director or person acting as such upon proper application.

History. Acts 1981, No. 120, § 17; Disposition of human tissue, § 20-17-A.S.A. 1947, § 82-517; Acts 1989, No. 396, 802.
§ 4; 1995, No. 1254, § 28.

Cross References. Arkansas Final Disposition Rights Act, § 20-17-102.

CASE NOTES

Cited: Alford v. Hale, 85 Ark. App. 23,
145 S.W.3d 389 (2004).

SUBCHAPTER 7 — PUTATIVE FATHER REGISTRY**SECTION.**

20-18-701. Definitions.

20-18-702. Creation.

20-18-703. Revocation of information.

SECTION.

20-18-704. Furnishing of information.

20-18-705. Penalty.

RESEARCH REFERENCES

Ark. L. Notes. Sampson, Coats, & Barger, Arkansas' Putative Father Registry and Related Adoption Code Provisions: Inadequate Protection for Thwarted Putative Fathers, 1997 Ark. L. Notes 49.

UALR L.J. Survey, Family Law, 12 UALR L.J. 631.

CASE NOTES**Notice of Adoption.**

Alleged father of child was not entitled to notice of adoption proceeding under § 9-9-212, even though he had established a substantial relationship with the

child, where he was not registered in the state putative father registry. In re Reeves, 309 Ark. 385, 831 S.W.2d 607 (1992).

20-18-701. Definitions.

As used in this subchapter:

(1) "Child" means a person under eighteen (18) years of age for whom paternity has not been established;

(2) "Court" means a court in this state or another state or territory of the United States of competent subject matter jurisdiction;

(3) "Division" means the Division of Health of the Department of Health and Human Services;

(4) "Father" means the biological male parent of a child;

(5) "Putative father" means any man not legally presumed or adjudicated to be the biological father of a child but who claims or is alleged to be the father of the child;

(6) "Registrant" means a person who has registered pursuant to this subchapter and who is claiming to be the father of a child;

(7) "Registry" means the Putative Father Registry; and

(8) "Regulations" means regulations promulgated by the division for the purpose of implementing this subchapter.

History. Acts 1989, No. 496, § 1.

20-18-702. Creation.

(a)(1) There is established in the Division of Health of the Department of Health and Human Services a Putative Father Registry.

(2) The purpose of the registry is to entitle putative fathers to notice of legal proceedings pertaining to the child for whom the putative father has registered.

(3) A putative father shall establish a significant custodial, personal, or financial relationship with the child before the putative father's rights attach.

(b)(1) Upon receipt of a written statement signed and acknowledged by the registrant before a notary public, the registry shall record the following information:

(A) The name, address, and Social Security number of any person who claims to be the father of a child for whom paternity is not presumed or has not been established by a court;

(B) The name, last known address, and Social Security number, if known, of the mother of the child;

(C) The name of the child, if born, and the location and date of birth, if known; and

(D) The date and time of receipt, which the division shall note on the written statement signed and acknowledged by the registrant.

(2)(A) The division shall provide a form to be used by the registrant.

(B) There shall be no fee required of the registrant to file the affidavit.

(c) The registry may accept the information prior to the birth of the child or at any time prior to the filing of a petition for adoption.

(d) The registry shall forward a copy of the information to the mother as notification that the person has registered with the registry.

(e) The registry shall maintain cross-reference indices by the name of the mother and the name of the child, if known.

History. Acts 1989, No. 496, § 2; 1999, No. 1054, § 1; 2005, No. 200, §§ 1, 2.

deleted "hereby" preceding "established" in (a)(1); added (a)(2), and (a)(3); and added (b)(5).

Amendments. The 2005 amendment redesignated former (a) as present (a)(1);

CASE NOTES

Cited: King v. Lybrand, 329 Ark. 163, 946 S.W.2d 946 (1997).

20-18-703. Revocation of information.

(a) Information supplied to the Putative Father Registry may be revoked by a written statement, signed and acknowledged by the registrant before a notary public.

(b) The statement shall include a declaration that, to the best of the registrant's knowledge and belief, he is not the father of the named child or that a court has adjudicated paternity and someone other than the registrant has been determined to be the father of the child.

(c) Revocation shall only be effective after the birth of the child.

History. Acts 1989, No. 496, § 3.

20-18-704. Furnishing of information.

(a) The Division of Health of the Department of Health and Human Services shall make available to attorneys the telephone number of the Putative Father Registry for purposes of inquiry as to a putative father's name and address contained in the registry.

(b) Information contained in the registry shall be admissible in any court proceeding in any court in this state.

(c) Upon receipt of a written request by the registrant, the mother, or the child, or pursuant to any request of the Department of Health and Human Services, the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, or of a prosecuting attorney or an attorney acting on behalf of his or her client in litigation involving the determination of paternity or support for the child or an adoption of the child, the division shall furnish a certified copy of the registry information for a named putative father, natural mother, or child.

(d) Upon request, the division shall furnish through electronic data exchange or otherwise a copy of the registry to the office for use in establishing paternity and support obligations.

(e) Otherwise, registry information shall be considered confidential and may not be disclosed. Registry information shall not be subject to the Freedom of Information Act of 1967, § 25-19-101 et seq.

History. Acts 1989, No. 496, § 4; 1995, No. 1184, § 33.

20-18-705. Penalty.

Any person who knowingly registers as a putative father pursuant to this subchapter when the registrant knows that he is not the biological father of the child shall upon conviction be guilty of a Class C misdemeanor.

History. Acts 1989, No. 496, § 5.

CHAPTER 19

ANIMALS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. RABIES VACCINATIONS GENERALLY.
3. RABIES CONTROL ACT.
4. OWNERSHIP AND BREEDING OF WOLVES AND WOLF-DOG HYBRIDS.
5. OWNERSHIP AND POSSESSION OF CERTAIN LARGE CARNIVORES.

RESEARCH REFERENCES

Am. Jur. 4 Am. Jur. 2d, Animals, § 20 et seq. **C.J.S.** 39A C.J.S., Health, §§ 70, 77.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

20-19-101. Humane societies.

20-19-102. Injuries to domesticated animals by dogs.

20-19-103. Sterilization of impounded dogs and cats.

SECTION.

20-19-104. Voluntary certification program.

Effective Dates. Acts 1887, No. 136, § 5: effective on passage.

Acts 1917, No. 155, § 3: effective on passage.

Acts 1939, No. 44, § 9: effective on passage.

Acts 1981, No. 869, § 4: Mar. 28, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that pounds, shelters and humane

organizations are in need of immediate legislation to assist in enforcing the obligations of persons obtaining dogs and cats from such organizations. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

20-19-101. Humane societies.

(a) The General Assembly finds and declares that humane societies for the prevention of cruelty to animals organized under the laws of this state now or hereinafter in effect are public organizations necessary to protect the health, safety, and general welfare of the citizenry of this state and are discharging a government function.

(b) The General Assembly finds and declares that the appropriation of public funds for the use of humane societies in the maintenance and operation of shelters for stray, diseased, neglected, and other animals and in the protection of the public from disease among such animals is a public use of the funds in the discharge of a government function.

History. Acts 1939, No. 44, §§ 1, 2; A.S.A. 1947, §§ 78-101, 78-102.

CASE NOTES

Cited: *Bailey v. Sebastian County Humane Soc'y*, 201 Ark. 354, 144 S.W.2d 716 (1940).

20-19-102. Injuries to domesticated animals by dogs.

(a)(1) "Domesticated animals" includes, but is not limited to, sheep, goats, cattle, swine, and poultry.

(2) Any person owning or having in possession or under control any dog shall be liable in damages to the owner or owners of any domesticated animals killed or injured by the dog in the full value of the domesticated animal killed or injured.

(b)(1) Any person engaged in raising domesticated animals or owning any domesticated animals who shall sustain any loss or damages to his or her or their domesticated animals by any dog shall have a right of action against the owner, person, or controller of the dog.

(2) Any person knowing that any dog has killed or is about to catch, injure, or kill any domesticated animal shall have the right to kill the dog, without in any way being liable to the owner of the dog in any courts of this state.

(c) The person sustaining loss or damage as mentioned in this section and desiring remuneration therefor may go before some justice of the peace of the county wherein the loss or damage occurred and make oath of the character of the loss or damage sustained, the value of the loss or damage, the dog or dogs, and the owner, possessor, or controller of the dog and file the same with the justice of the peace, who shall issue a summons stating the nature of the plaintiff's claim, the amount claimed, and the cost accrued, which shall be served and returned as in ordinary actions.

(d)(1) If the defendant shall pay to the officer serving the summons the amount of damages claimed, the costs endorsed, and a further fee to the officer of twenty-five cents (25¢) for making the return, the summons shall be returned satisfied, and no further proceedings had.

(2) If the defendant fails, neglects, or refuses to pay that amount, the justice of the peace shall try the cause as in other ordinary actions and give judgment in favor of the plaintiff for the amount proved in the cause, for which the defendant may be liable under this section.

(e) In a second suit and recovery by any plaintiff against the same defendant on account of killing or injury done by the same dog, the justice of the peace shall render judgment for double the amount of damages proven.

History. Acts 1887, No. 136, §§ 1-4, p. 235; 1917, No. 155, §§ 1, 2; C. & M. Dig., §§ 339-343; Pope's Dig., §§ 354-358; A.S.A. 1947, §§ 78-206 — 78-210; Acts 1987, No. 393, §§ 1, 2.

RESEARCH REFERENCES

Ark. L. Rev. Absolute Liability in Arkansas, 8 Ark. L. Rev. 83.

CASE NOTES

Domesticated Animals.

The term "domesticated animals" is limited to livestock and does not cover domes-

tic pets. *McKinney v. Robbins*, 319 Ark. 596, 892 S.W.2d 502 (1995).

20-19-103. Sterilization of impounded dogs and cats.

(a) It shall be unlawful for any pound, shelter, or humane organization supported wholly or partly by public funds to release any dog or cat which has not been sterilized to a new owner unless, except as provided in subsection (c) of this section, a promise to spay or neuter the animal has been signed by the person acquiring the animal.

(b)(1) The sterilization shall be performed by the date stipulated, except that the releasing agency may grant an extension of time not to exceed thirty (30) days upon the request of the owner.

(2)(A) The signed promise shall be binding, and failure to comply shall constitute a violation of this section.

(B) In such case, the animal described therein shall be returned to the releasing agency upon demand. Ownership of the animal reverts to the releasing agency in such instance. No claim may be made by the owner to recover expenses incurred for maintenance of the animal, including the initial procurement cost.

(c)(1) In any county in the state having a population of three hundred thousand (300,000) or more persons according to the most recent federal decennial census, it shall be unlawful for any pound, shelter, or humane organization to release to a new owner any dog or cat over two (2) months of age which has not been sterilized except as provided in subdivision (c)(2) of this section.

(2)(A) An animal which in the opinion of a veterinarian licensed to practice veterinary medicine in the State of Arkansas is medically compromised to the extent that it cannot withstand immediate sterilization may be temporarily released pursuant to a foster care agreement until such time as it can safely be sterilized or until two (2) veterinarians licensed to practice veterinary medicine in the State of Arkansas certify that is unlikely that the animal will ever recover to the extent that it can safely be sterilized.

(B)(i) At that time, ownership of the animal may be transferred to an owner who certifies that the animal will not be used for breeding.

(ii) An owner who violates the agreement shall be subject to the penalties set forth in subsection (d) of this section.

(d) Violations of this section are declared to be misdemeanors punishable by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

History. Acts 1981, No. 869, §§ 1, 2; A.S.A. 1947, §§ 78-214, 78-215; Acts 1995, No. 839, § 1; 1999, No. 488, § 2.

Publisher's Notes. Acts 1999, No. 488, § 1, provided: "Legislative intent. The

General Assembly finds that approximately six million (6,000,000) healthy dogs and cats are killed nationally each year in public and private shelters. Of this six million (6,000,000), it is estimated that

forty thousand (40,000) are killed each year in Arkansas. Capture, containment and killing of surplus dogs and cats is an ineffective and inhumane method of addressing the problem of overpopulation and places an unnecessary drain on the financial and human resources of the people of the State of Arkansas. Shelter personnel suffer enormous psychological strain caused by the hidden costs to society of irresponsible pet owners. Spaying and neutering dogs and cats is a cheaper, more effective and more humane means of permanently reducing the surplus of dogs and cats. Further, experience has shown that less than fifty percent (50%) of persons who receive animals from shelters

subject to an agreement to subsequently sterilize those animals, comply with their agreement. Attempts to enforce those agreements place an intolerable burden upon the enforcement effort. Young age spay/neuter has proved to be a safe and practical alternative to release of unsterilized animals. Therefore, the General Assembly hereby amends Arkansas Code 20-19-103 to require that in any county having a population of three hundred thousand (300,000) or greater, dogs and cats over two (2) months of age be spayed and neutered prior to their release by pounds, shelters or humane organizations."

20-19-104. Voluntary certification program.

(a) The Division of Health of the Department of Health and Human Services shall establish a voluntary certification program for animal control officers, animal shelters, and other humane society counterparts.

(b) The certification shall be based upon courses recommended by the National Animal Control Association or its equivalent.

(c) Certification of animal shelters shall be based upon compliance with shelter standards published by the Humane Society of the United States.

(d) Training shall be administered by the Arkansas Animal Control Association in cooperation with the division and utilizing qualified experts, including, but not limited to, licensed veterinarians and persons holding professional registrations or certifications in the appropriate areas of expertise.

History. Acts 2001, No. 1663, § 1.

SUBCHAPTER 2 — RABIES VACCINATIONS GENERALLY

SECTION.

20-19-201. Municipal ordinances unaffected.

SECTION.

20-19-202. Vaccination required.
20-19-203. Administration.

Effective Dates. Acts 1951, No. 374, § 2: Mar. 20, 1951. Emergency clause provided: "Whereas, the cost of vaccine has greatly increased in price and there is need for the vaccination of the dogs of this State, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

Acts 1961, No. 447, § 2: Mar. 15, 1961. Emergency clause provided: "Whereas the cost of vaccine has greatly increased in price and there is need for the vaccination of the dogs of this State, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

20-19-201. Municipal ordinances unaffected.

This subchapter shall not displace any municipal ordinance in effect in any city which requires the vaccination of dogs and cats against rabies as frequently as one (1) time a year and which prescribes a penalty equal to the penalties prescribed in § 20-19-202(c) and (d) for failure to have dogs within the city vaccinated.

History. Acts 1945, No. 171, § 3; A.S.A. 1947, § 78-203.

Cross References. Municipal regulation, § 14-54-1101 et seq.

20-19-202. Vaccination required.

(a) All dogs and cats within the State of Arkansas shall be vaccinated at least one (1) time a year against rabies, and it is made the duty of all owners of dogs or cats or persons having the possession or control of dogs or cats within this state to have the animals vaccinated with vaccine against rabies in an amount, quantity, and quality to be approved by the State Veterinarian.

(b) However, this section shall not apply within cities or incorporated towns through which a state line runs when the adjoining state has no comparable law.

(c) Any owner of any dog or cat or any person having the care and control of any dog or cat who fails to have the dog or cat vaccinated according to the terms of this subchapter shall be guilty of a violation and upon conviction shall be fined in any sum not less than five dollars (\$5.00) nor more than twenty-five dollars (\$25.00) for each offense.

(d) Any dog or cat termed a stray that is not vaccinated is subject to destruction.

History. Acts 1945, No. 171, §§ 1, 4; 1955, No. 3, § 1; A.S.A. 1947, §§ 78-201, 78-204; Acts 2005, No. 1994, § 114.

substituted "one (1) time" for "once" in (a); and substituted "violation" for "misdemeanor" in (c).

Amendments. The 2005 amendment

20-19-203. Administration.

(a) For the purpose of carrying this subchapter into effect, the Arkansas Livestock and Poultry Commission is charged with the responsibility of making the rules and regulations and administering this subchapter with the approval of the Governor.

(b) The charge for furnishing the vaccine and for the vaccination shall not exceed seventy-five cents (75¢) per dog or cat, and without further charge for each vaccination, there shall be issued to the owner or person in charge of the dog or cat a certificate and metal tag showing the ownership of the dog or cat, the date of vaccination, and the general description of the animal.

History. Acts 1945, No. 171, § 2; 1951, No. 374, § 1; 1961, No. 447, § 1; A.S.A. 1947, § 78-202.

SUBCHAPTER 3 — RABIES CONTROL ACT

SECTION.

- 20-19-301. Title.
- 20-19-302. Definitions.
- 20-19-303. Power of political subdivisions not limited — Applicability.
- 20-19-304. Penalties.
- 20-19-305. Vaccination for dogs and cats required.
- 20-19-306. Illegal acts when person bitten.
- 20-19-307. Confinement of animal when person bitten.

SECTION.

- 20-19-308. Shipment to laboratory of head of animal suspected of being rabid.
- 20-19-309. Area quarantine.
- 20-19-310. Authority to impose additional measures.
- 20-19-311. Administration by Director of the Division of Health of the Department of Health and Human Services.
- 20-19-312. State Board of Health's authority to regulate.

Cross References. Public health laboratory, investigation of rabies cases, § 20-7-114.

Effective Dates. Acts 1953, No. 238, § 3: approved Mar. 6, 1953. Emergency clause provided: "It is found and declared by the General Assembly of the State of Arkansas that many animals suspected of having rabies are killed on which no test is made to determine this fact because of the expense involved in shipping the head to the State Health Department; that this act provides a method by which said expense shall be borne by the County. Therefore, this act being necessary for the public health, peace, and safety, an emergency is declared to exist and shall take effect from and after its passage."

Acts 1968 (1st Ex. Sess.), No. 11, § 12: Feb. 15, 1968. Emergency clause provided: "It is hereby found and determined by the General Assembly that a serious situation exists in the State of Arkansas relative to the handling and management of suspected rabid dogs and other animals and that the best interest of the people of the State of Arkansas can be served by more effective rabies control measures

herein provided. Therefore, an emergency is declared to exist and this Act being necessary for the immediate preservation and protection of the peace, health, and safety of our citizens, same shall take effect and be in full force and effect from and after its passage and approval."

Acts 1975, No. 725, § 6: Apr. 3, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that a serious situation exists in the State of Arkansas relative to the handling and management of suspected rabid animals; that the Rabies Control Act of 1968 omitted the inclusion of cats as constituting a dangerous threat to the health and safety of the citizens of this State when said cats are rabid; that numerous cases of rabid cats have been reported in the State of Arkansas; that it is in the best interest of the people of the State of Arkansas to require the vaccination of cats in this State. Therefore, an emergency is declared to exist and this Act being necessary for the immediate preservation and protection of the peace, health and safety of our citizens shall take effect and be in full force from and after its passage and approval."

20-19-301. Title.

This subchapter shall be known as the "Rabies Control Act".

History. Acts 1968 (1st Ex. Sess.), No. 11, § 1; A.S.A. 1947, § 82-2401.

20-19-302. Definitions.

As used in this subchapter:

(1) "Animal" means any animal other than dogs or cats which may be affected by rabies;

(2) "Cats" includes all members of the feline family;

(3) "Dogs" includes all members of the canine family;

(4) "Has been bitten" means has been seized with teeth or jaws, so that the skin of the person or thing seized has been nipped or gripped, or has been wounded or pierced, and the term includes contact of saliva with any break or abrasion of the skin;

(5) "Owner" means any person having a right of property in a dog or cat or other animal or who keeps or harbors a dog or cat or other animal, or has it in his or her care, or acts as its custodian, or knowingly permits a dog or cat or other animal to remain on or about any premises occupied by him or her; and

(6) "Vaccination against rabies" means the injection, subcutaneously or otherwise, of canine antirabic vaccine, as approved by the United States Department of Agriculture or State Veterinarian and administered by a licensed veterinarian or agent of the Division of Health of the Department of Health and Human Services or the State Veterinarian.

History. Acts 1968 (1st Ex. Sess.), No. 11, § 2; 1975, No. 725, § 1; A.S.A. 1947, § 82-2402.

20-19-303. Power of political subdivisions not limited — Applicability.

(a)(1) Nothing in this subchapter shall be held to limit in any manner the power of any municipality or political subdivision to prohibit dogs or cats or other animals from running at large whether or not they have been vaccinated against rabies as provided in this subchapter.

(2) Nothing in this subchapter shall be construed to limit in any manner the power of any municipality or other political subdivision to further control and regulate dogs or cats or other animals in such municipality or political subdivision.

(b) The provisions of this subchapter will apply in all situations where a municipality or political subdivision does not have an effective rabies control act.

History. Acts 1968 (1st Ex. Sess.), No. 11, § 7; 1975, No. 725, § 5; A.S.A. 1947, § 82-2407.

20-19-304. Penalties.

(a)(1) A person shall be guilty of a violation for:

(A) Violating or aiding in or abetting the violation of any provision of this subchapter;

(B) Making a misrepresentation in regard to any matter prescribed by this subchapter;

(C) Resisting, obstructing, or impeding any authorized officer in enforcing this subchapter; or

(D) Refusing to produce for inoculation against rabies any dog or cat in his or her possession.

(2) Upon conviction, the person shall be fined not less than five dollars (\$5.00) nor more than twenty-five dollars (\$25.00) for each offense.

(b) Any dog or cat termed a stray that is not vaccinated against rabies is subject to destruction.

(c)(1) Any officers failing, refusing, or neglecting to carry out the provisions of this subchapter shall be guilty of a violation.

(2) Upon conviction, the officer shall be fined in any sum not less than five dollars (\$5.00) nor more than twenty-five dollars (\$25.00) for each offense.

History. Acts 1968 (1st Ex. Sess.), No. 11, §§ 5, 9; 1975, No. 725, § 4; A.S.A. 1947, §§ 82-2405, 82-2409; Acts 2005, No. 1994, § 115.

Amendments. The 2005 amendment inserted the present subdivision designations in (a) and (c) and made related

changes; substituted "A person shall be guilty of a violation for" for "Any person" in (a)(1); substituted "or her possession" for "possession is guilty of a misdemeanor" in (a)(1)(D); and, in (c)(1), substituted "failing, refusing" for "failing or refusing" and "violation" for "misdemeanor."

20-19-305. Vaccination for dogs and cats required.

All dogs and cats shall be vaccinated against rabies annually in accordance with § 20-19-201 et seq.

History. Acts 1968 (1st Ex. Sess.), No. 11, § 2; 1975, No. 725, § 1; A.S.A. 1947, § 82-2402.

20-19-306. Illegal acts when person bitten.

(a) It is unlawful for any person bitten, the family, treating physician, or veterinarian that has knowledge of a person bitten by a dog or cat or other animal to refuse to notify the health authorities promptly.

(b) It is unlawful for the owner of the dog or cat or other animal to sell, give away, transfer, transport to another area, or otherwise dispose of the dog or cat or other animal that is known to have bitten a person until it is released by the health authorities.

(c)(1) It is unlawful for the owner of the dog or cat or other animal to refuse or fail to comply with the written or printed instructions of the health authorities in any particular case.

(2)(A) The written instructions shall be delivered in person by health authorities or their authorized agent.

(B) If instructions cannot be delivered in person, they shall be mailed by regular mail, postage prepaid, and addressed to the owner of the dog or cat or other animal.

(C) The affidavit or testimony of the health authorities or their authorized agent, who delivered or mailed such instructions, shall be prima facie evidence of the receipt of the instructions by the owner of the dog or cat or other animal.

History. Acts 1968 (1st Ex. Sess.), No. 11, § 3; 1975, No. 725, § 2; A.S.A. 1947, § 82-2403.

20-19-307. Confinement of animal when person bitten.

(a) Whenever the health authorities, county sheriff's office, or municipal police officers in cooperation with health authorities receive information that any person has been bitten by a dog or cat or other animal, these local public officials acting in cooperation shall have the dog or other animal confined and observed by a licensed veterinarian. If there is no local facility available for confining the dog or cat or other animal, it shall be the owner's responsibility to make satisfactory arrangements or to prepare a facility for the purpose of confinement.

(b)(1) The offending dog or cat shall be confined for a period of ten (10) days by a veterinarian or owner or public pound.

(2) All other species of animals are to be confined and observed for rabies in the same manner, except the time element will vary so as to compensate for the difference in the incubation period of the disease. This adjusted time element is to be determined by consultation with the Division of Health of the Department of Health and Human Services authorities.

(3) The veterinarian, owner, or public pound management personnel shall notify the local public health authorities of the disposition of the dog or animal at the termination of the confinement.

(c)(1) Any confinement and observation expense incurred in the handling of any dog or cat or other animal under this subchapter shall be borne by the owner.

(2) If the dog or cat or other animal is a stray and has no owner, the confinement and observation expense shall be borne by the person bitten or, if a minor, by the head of the family.

History. Acts 1968 (1st Ex. Sess.), No. 11, § 3; 1975, No. 725, § 2; A.S.A. 1947, § 82-2403.

20-19-308. Shipment to laboratory of head of animal suspected of being rabid.

(a)(1) Any person causing the death of an animal, either wild or domesticated, suspected of being rabid shall cause the head of the animal, together with an affidavit stating that he or she has reasonable grounds to believe that the animal was rabid, to be presented to the county court of the county in which the animal was killed.

(2)(A) It shall be the duty of the court to have the head shipped, prepaid, to the State Public Health Laboratory of the Division of Health of the Department of Health and Human Services.

(B) The expenses incurred in such a shipment shall be paid from the county general fund of the county in which the animal was killed.

(b)(1)(A) Whenever health and other public officials request commercial bus lines operating in the State of Arkansas to receive properly packaged small animal heads for transporting to the laboratory for examination for rabies and when a human life is in danger, it shall be unlawful for bus lines to refuse to transport these properly packaged small animal heads to the laboratory for examination.

(B) Commercial bus lines failing, refusing, or neglecting to carry out the applicable provisions of this section shall be guilty of a violation and upon conviction shall be fined not less than five dollars (\$5.00) nor more than twenty-five dollars (\$25.00) for each offense.

(2)(A) The accepted method of packaging these severed animal heads shall be formulated and distributed by the Division of Health of the Department of Health and Human Services.

(B) The division shall make arrangements to pick up these specimens at the bus terminal without delay.

(C) The division shall develop a method of packaging that protects the patrons and bus company employees.

History. Acts 1953, No. 238, § 1; Acts 1968 (1st Ex. Sess.), No. 11, § 6; A.S.A. 1947, §§ 82-610, 82-2406; Acts 2005, No. 1994, § 116.

Amendments. The 2005 amendment, in (a)(1), substituted "of the animal" for "thereof" and "killed" for "killed, and," inserted "or she" and the present (a)(2)

designation; redesignated former (a)(2) as present (a)(2)(B); inserted the present subdivision designations in (b)(1); substituted "violation" for "misdemeanor" in (b)(1)(B); and substituted "division" for "Department of Health" three times in (b)(2).

20-19-309. Area quarantine.

(a)(1) The Director of the Division of Health of the Department of Health and Human Services shall place certain areas under a rabies quarantine upon request of proper local officials.

(2) In serious situations, the director may place the area under quarantine without waiting for a local request.

(b) The occurrence of three (3) or more positive rabies cases in animals shall be sufficient basis for placing areas under quarantine.

(c) The positive rabies cases shall be laboratory-confirmed by the State Public Health Laboratory of the Division of Health of the Department of Health and Human Services or any other laboratory acceptable to or approved by the director.

History. Acts 1968 (1st Ex. Sess.), No. 11, § 4; 1975, No. 725, § 3; A.S.A. 1947, § 82-2404.

20-19-310. Authority to impose additional measures.

Whenever the proper officials or a government unit are convinced that the situation is conducive to the spread of rabies, additional measures may be imposed by the government unit if deemed necessary to prevent the spread of rabies among dogs and other animals. The government unit involved may require:

(1) That all dogs or cats or other animals in the locality be kept:

(A) Confined within an enclosure; or

(B) Muzzled and restrained by a leash composed of chain, wire, rope, or cable;

(2) That all owners or keepers of dogs or cats or other animals take such prophylactic measures as may be required and necessary to prevent the spread of rabies; or

(3) That other measures, in addition to annual vaccination against rabies, that may be necessary to control the spread of rabies in dogs, cats, and other animals be carried out.

History. Acts 1968 (1st Ex. Sess.), No. 11, § 4; 1975, No. 725, § 3; A.S.A. 1947, § 82-2404.

20-19-311. Administration by Director of the Division of Health of the Department of Health and Human Services.

The Director of the Division of Health of the Department of Health and Human Services or his or her official representative shall have the responsibility for carrying out the provisions of this subchapter.

History. Acts 1968 (1st Ex. Sess.), No. 11, § 2; 1975, No. 725, § 1; A.S.A. 1947, § 82-2402.

20-19-312. State Board of Health's authority to regulate.

The State Board of Health shall promulgate such rules and regulations as are necessary to carry out the purposes or provisions of this subchapter, with subsequent amendments as needed.

History. Acts 1968 (1st Ex. Sess.), No. 11, § 8; A.S.A. 1947, § 82-2408.

SUBCHAPTER 4 — OWNERSHIP AND BREEDING OF WOLVES AND WOLF-DOG HYBRIDS**SECTION.**

20-19-401. Findings.

20-19-402. Definition.

20-19-403. Records.

20-19-404. Confinement — Care — Inspections.

SECTION.

20-19-405. Entry into the state.

20-19-406. Vaccination.

20-19-407. Penalties.

20-19-408. Local regulation.

20-19-401. Findings.

The General Assembly finds that:

(1) Wolves and wolf-dog hybrids are now present in this state but remain unregulated;

(2) The Compendium of Animal Rabies Control advises that no vaccination has been approved for use in wolves or wolf-dog hybrids;

(3) However, wolves and dogs are scientifically classified as the same species;

(4) "Off" and "Extra" label use of vaccines approved for use in dogs are widely used to vaccinate wolves and wolf-dog hybrids, even by the federal government, to prevent diseases such as rabies;

(5) Failure to vaccinate wolves and wolf-dog hybrids raises the possibility of creating a large pool of animals that could serve as reservoirs for rabies; and

(6) Due to the neglect and irresponsibility of their owners, some wolves and wolf-dog hybrids could pose a threat to public safety in this state.

History. Acts 2001, No. 1768, § 1.

RESEARCH REFERENCES

UALR L.J. Survey of Legislation, 2001
Arkansas General Assembly, Public
Health and Welfare, 24 UALR L.J. 557.

20-19-402. Definition.

As used in this subchapter, "wolf-dog hybrid" means any animal which is publicly acknowledged by its owner as being the offspring of a wolf and domestic dog. No animal may be judged to be a wolf or wolf-dog hybrid based strictly on its appearance.

History. Acts 2001, No. 1768, § 2.

20-19-403. Records.

(a) Owners of wolves and wolf-dog hybrids shall maintain all health records of each wolf and wolf-dog hybrid, including health certificates, records of immunization, and any other documentary evidence pertaining to the health and welfare of the animal.

(b) The owner shall maintain records of acquisitions and disposals of wolf-dog hybrids, including the name and address of the person with whom a transaction is conducted, with entries being made on the day of the transaction.

(c) Records shall be available for inspection by law enforcement personnel at reasonable hours.

History. Acts 2001, No. 1768, § 3.

20-19-404. Confinement — Care — Inspections.

(a) Wolves and wolf-dog hybrids shall be provided adequate confinement and adequate feeding.

(b) Adequate confinement shall include at least:

(1) A brick, concrete, or chain-link enclosure surrounded by two (2) layers of fencing as follows:

(A) For a single animal:

(i) Either an inner chain-link fence a minimum of fifteen feet by eight feet by ten feet (15' x 8' x 10') or an electric fence that prevents climbing over, and either extending two feet (2') underground or employing some other means that prevents digging under; and

(ii) An outer fence eight feet (8') high with at least four feet (4') between the two (2) fences unless the inner fence is an electric fence posted with warning signs and the gate is locked at all times;

(B) For a pair, double the cage length for a single animal; or

(C) For more than two (2) animals, add ten feet (10') to the single animal length and width for each additional animal;

(2) A secluded den four feet (4') square for each animal; and

(3) No more than four (4) total of wolves or wolf-dog hybrids, or both, per acre.

(c) Adequate confinement shall not include tethering of a wolf or wolf-dog hybrid not under the direct supervision and control of the owner or custodian.

(d)(1) Adequate feeding shall include daily feedings and provisions of water.

(2) The feed used shall consist of a minimum meat-based protein content of twenty-five percent (25%) and crude fat of fifteen percent (15%), with exceptions for geriatric and overweight animals or under the advice of a licensed veterinarian.

(e) Owners and custodians of wolves and wolf-dog hybrids shall allow inspections by law enforcement personnel at reasonable hours to ensure adequate confinement and adequate feeding.

(f) This section applies only to owners of four (4) or more adult wolf-dog hybrids or wolves, animals one (1) year of age or older.

History. Acts 2001, No. 1768, § 4.

20-19-405. Entry into the state.

(a) Wolves and wolf-dog hybrids may enter into this state only if each animal is accompanied by a certificate of veterinary inspection indicating that the animal is free from disease or exposure to infectious or contagious disease.

(b) No animals from rabies-quarantined areas shall be admitted into this state.

History. Acts 2001, No. 1768, § 5.

20-19-406. Vaccination.

(a) Wolves and wolf-dog hybrids are required to be vaccinated against rabies by a licensed veterinarian with a vaccine approved for dog use, and a rabies certificate may be issued.

(b) Veterinarians shall inform the owner of the wolf or wolf-dog hybrid, preferably in writing, that the vaccination is considered "off label" and that protection against rabies is not guaranteed.

(c) If a wolf or wolf-dog hybrid bites a person, the following criteria shall be used by an official of the Division of Health of the Department of Health and Human Services in dealing with the animal:

(1) The decision shall consider, at least:

(A) The epidemiology and risk of rabies in the species of animal in question;

(B) Possible prior exposure to a rabies vector;

(C) Behavior of the animal at the time of the bite;

(D) Prior rabies vaccinations; and

(E) Other circumstances that may exist;

(2) In some situations, the division shall consider the initiative and willingness of the individual so exposed to submit to postexposure antirabies immunization after being adequately informed of all potential risks;

(3) Upon written order by the Director of the Division of Health of the Department of Health and Human Services or a specifically designated representative, any biting animal determined to be at significant risk for the transmission of rabies shall be humanely killed and the brain tissue submitted for testing; and

(4) The division has the authority to order the quarantine of an animal determined to be a very low risk for the transmission of rabies for a thirty-day observation period as an alternate method to euthanasia and testing.

(d) Owners shall be notified and given three (3) business days to provide proof to the division in their animal's defense before the animal can be euthanized.

(e) If in the future the United States Department of Agriculture approves the use of rabies vaccines in wolves or wolf-dog hybrids, or both, then wolves and wolf-dog hybrids will fall under the same regulations as dogs regarding biting humans and rabies control.

History. Acts 2001, No. 1768, § 6.

20-19-407. Penalties.

(a) If a wolf or wolf-dog hybrid bites a person or injures or destroys another animal while out of its confined area, the person responsible for the adequate confinement of the animal upon conviction shall be guilty of a Class A misdemeanor.

(b) If a wolf or wolf-dog hybrid is not adequately confined or fed, the person responsible for adequate confinement or adequate feeding of the

animal, or both adequate feeding and adequate confinement upon conviction shall be guilty of a Class A misdemeanor.

(c) A person who abandons or releases a wolf or wolf-dog hybrid into the wild upon conviction shall be guilty of a Class A misdemeanor.

History. Acts 2001, No. 1768, § 7.

20-19-408. Local regulation.

Nothing in this subchapter shall be construed to prohibit local regulation of the ownership, breeding, confinement, or feeding of wolves or wolf-dog hybrids.

History. Acts 2001, No. 1768, § 8.

SUBCHAPTER 5 — OWNERSHIP AND POSSESSION OF CERTAIN LARGE CARNIVORES

SECTION.

- 20-19-501. Definitions.
- 20-19-502. Prohibited acts.
- 20-19-503. Exemptions.
- 20-19-504. Permit for personal possession.
- 20-19-505. Caging requirements.
- 20-19-506. Insurance — Signs — Notification.

SECTION.

- 20-19-507. Inspection.
- 20-19-508. Public contact — Warnings of escape.
- 20-19-509. Confiscation.
- 20-19-510. Penalties.
- 20-19-511. Rules and regulations.

20-19-501. Definitions.

As used in this subchapter:

(1) “Large carnivore” means any live individual of those species of animals that are inherently dangerous to humans, including:

- (A) Tigers;
- (B) Lions; and
- (C) All bears;

(2) “Possessor” means a person who owns, keeps, or has custody or control of a large carnivore; and

(3)(A) “Wildlife sanctuary” means a nonprofit organization under § 501(c)(3) of the Internal Revenue Code as it existed that operates a place of refuge where abused, neglected, unwanted, impounded, abandoned, orphaned, or displaced large carnivores are provided care for their lifetimes.

(B) “Wildlife sanctuary” does not mean a place that:

- (i) Conducts any activity that is not inherent to the large carnivore’s nature;
- (ii) Uses the large carnivore for any type of entertainment;
- (iii) Sells, trades, or barter the large carnivore or the large carnivore’s body parts; or
- (iv) Breeds the large carnivore for purposes of sale.

History. Acts 2005, No. 2226, § 1.

20-19-502. Prohibited acts.

(a) Except as permitted under this subchapter, it is unlawful for a person to:

- (1) Own or possess a large carnivore;
- (2) Breed a large carnivore; or
- (3) Transfer ownership or possession of or receive a transfer of ownership or possession of a large carnivore, with or without remuneration.

(b) Except as permitted under this subchapter, it is unlawful for a person or other entity in control of any property, residence, or business premises to knowingly permit any other person to be in possession of a large carnivore upon the property, residence, or business premises.

History. Acts 2005, No. 2226, § 1.

20-19-503. Exemptions.

This subchapter does not apply to:

- (1) Institutions accredited by the American Zoo and Aquarium Association;
- (2) Registered nonprofit humane societies;
- (3) Animal control officers or law enforcement officers acting under the authority of this subchapter;
- (4) Veterinary hospitals or clinics;
- (5) A person or organization with a United States Department of Agriculture Wildlife Exhibition Permit;
- (6) Employees of the Arkansas State Game and Fish Commission in the performance of their duties;
- (7) Persons holding a valid Arkansas State Game and Fish Commission Scientific Collection Permit applicable to a large carnivore; or
- (8) Persons or organizations with an Arkansas State Game and Fish Commission Wildlife Breeder/Dealer Permit.

History. Acts 2005, No. 2226, § 1.

20-19-504. Permit for personal possession.

(a) A person may possess a large carnivore only if:

- (1) The person was in possession of the large carnivore and was the legal possessor of the large carnivore on or before August 12, 2005; and
- (2) The person applies for and is granted a permit for personal possession for each large carnivore in the person's possession not more than one hundred eighty (180) days after August 12, 2005.

(b)(1) A person under subsection (a) of this section shall annually obtain a permit for personal possession.

(2) After August 12, 2005, any additional large carnivore shall not be brought into possession under the authority of a permit for personal possession.

(c)(1) An applicant shall file on forms provided by the sheriff's department an application to receive a permit for personal possession with the sheriff's department of the county where the large carnivore is kept.

(2) The application shall include:

- (A) The name, address, and telephone number of the applicant;
- (B) A description of each large carnivore, including the scientific classification, name, gender, age, color, weight, and distinguishing marks or coloration that would aid in the identification of the animal;
- (C) A photograph of the large carnivore;
- (D) The location where the large carnivore is kept; and
- (E) The name, address, and telephone number of the person from whom the applicant obtained the large carnivore, if known.

(3) The application shall be signed by the veterinarian who is expected to provide veterinary care to the large carnivore and shall include the veterinarian's name, address, and telephone number.

(d) The county sheriff's department shall not grant a permit unless:

(1) An annual permit fee of two hundred fifty dollars (\$250) for each large carnivore accompanies the application;

(2) The applicant is eighteen (18) years of age or older;

(3) The applicant has not pleaded nolo contendere or guilty to or been found guilty of any animal cruelty violations in the past ten (10) years or to a felony offense for possession, sale, or use of illegal narcotics in the past ten (10) years;

(4) The facility and the conditions in which the large carnivore are kept comply with this subchapter; and

(5) The applicant has obtained the liability insurance coverage for the large carnivore as required under this subchapter.

(e)(1) The county sheriff's department shall keep records of persons issued a valid permit for personal possession of a large carnivore and provide copies of the records to the Arkansas State Game and Fish Commission when each permit is issued.

(2) A permit holder shall notify the county sheriff's department of any changes of the permit holder's information, including the death of the large carnivore.

(f)(1) In addition to the other requirements for issuance of a permit for personal possession, the large carnivore shall be spayed or neutered before a permit is issued to the possessor unless a veterinarian confirms that spaying and neutering would endanger the large carnivore.

(2) A record of the large carnivore's being spayed or neutered by a veterinarian is to be kept on file by the permit holder.

(g) All fees levied and collected for permits of personal possession under this section shall be deposited into the county treasury to be used by the county sheriff's department to offset the cost of issuing permits of personal possession, for any costs involved in controlling large carnivores located within the county, and for any other animal control costs.

History. Acts 2005, No. 2226, § 1.

20-19-505. Caging requirements.

(a)(1) The possessor of a large carnivore is required to maintain the large carnivore in a cage that meets the requirements recommended by the United States Department of Agriculture or the American Zoo and Aquarium Association as in existence on January 1, 2005, for each species of large carnivore.

(2) Failure to provide the caging required by this section shall result in the cancellation of the permit for personal possession.

(b) Deviations from these caging requirements may be approved by the county sheriff of the county where the large carnivore is kept upon showing of good cause.

History. Acts 2005, No. 2226, § 1.

20-19-506. Insurance — Signs — Notification.

(a)(1) A possessor of a large carnivore shall maintain liability insurance coverage of not less than one hundred thousand dollars (\$100,000) for each occurrence for liability damages for destruction of or damage to property and for death or bodily injury to a person caused by the large carnivore.

(2) The possessor of a large carnivore shall provide a copy of the policy for liability insurance to the county sheriff's department on an annual basis to obtain or renew a permit.

(b)(1) The possessor of a large carnivore shall post and display a sign at each possible entrance onto the premises where a large carnivore is kept.

(2) The sign shall be clearly legible and easily readable by the public.

(3) The sign shall warn that there is a large carnivore on the premises.

History. Acts 2005, No. 2226, § 1.

20-19-507. Inspection.

The possessor of a large carnivore shall allow an official of the county sheriff's department, an animal control officer, Arkansas State Game and Fish Commission Wildlife Officer, or a law enforcement officer of the municipality or county where the large carnivore is kept to enter the premises to ensure compliance with this subchapter.

History. Acts 2005, No. 2226, § 1.

20-19-508. Public contact — Warnings of escape.

(a) The possessor of a large carnivore shall not bring a large carnivore to any commercial or retail establishment unless the possessor is bringing the large carnivore to a veterinarian clinic.

(b)(1) If a large carnivore escapes or is released, the possessor of the large carnivore shall immediately contact the Arkansas State Game and Fish Commission and law enforcement officials of the city or county where the possessor resides to report the escape or release.

(2) The possessor is liable for all expenses associated with efforts to recapture the large carnivore.

(c) A person or an organization with a United States Department of Agriculture Wildlife Exhibition Permit may take the large carnivore to schools and other exhibitions for educational or fundraising purposes.

History. Acts 2005, No. 2226, § 1.

20-19-509. Confiscation.

(a) A large carnivore may be immediately confiscated by a county sheriff's department if:

(1) The possessor does not have a permit for personal possession;

(2) The possessor does not have the liability insurance coverage required under this subchapter;

(3) Conditions under which the large carnivore is kept are directly or indirectly dangerous to human health and safety; or

(4) The caging requirements of § 20-19-505 are not met.

(b)(1) If a large carnivore is confiscated, the possessor shall be liable for the costs of placement and care for the large carnivore from the time of confiscation until the time the large carnivore has been relocated to an alternative facility.

(2) The county sheriff's department shall seek to place the confiscated large carnivore with a wildlife sanctuary, humane society, or an institution accredited by the American Zoo and Aquarium Association.

History. Acts 2005, No. 2226, § 1.

20-19-510. Penalties.

A person who is in violation of the prohibitions of § 20-19-502 is guilty of a Class A misdemeanor.

History. Acts 2005, No. 2226, § 1.

20-19-511. Rules and regulations.

(a) The county sheriff's department of each county may collect the fees for the permits for personal possession required under this subchapter.

(b) The Arkansas State Game and Fish Commission may adopt rules and regulations to implement and enforce this subchapter.

History. Acts 2005, No. 2226, § 1.

CHAPTER 20

PESTS AND PESTICIDES

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS PESTICIDE USE AND APPLICATION ACT.
3. PESTICIDES AND CHEMICALS SAFE FOR CHILDREN HAND-HARVESTING CROPS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

20-20-101. Date of manufacture stamped
on cotton insecticides.

20-20-101. Date of manufacture stamped on cotton insecticides.

(a) Every person, firm, or corporation bagging any commercial cotton insecticide or poison shall stamp on each bag or on a tag attached to each bag the date on which the insecticide or poison was manufactured.

(b)(1) Any person, firm, or corporation failing or refusing to comply with the requirements of this section shall be guilty of a violation and upon conviction shall be fined in any sum not less than five dollars (\$5.00) nor more than one hundred dollars (\$100).

(2) Each bag or other container that is shipped without first having the date placed thereon shall be a separate offense.

History. Acts 1959, No. 458, §§ 1, 2; A.S.A. 1947, §§ 77-212, 77-213; Acts 2005, No. 1994, § 117.

Publisher's Notes. Acts 1959, No. 458, §§ 1, 2, are also codified as § 2-16-102.

Amendments. The 2005 amendment substituted "violation" for "misdemeanor" in (b)(1).

SUBCHAPTER 2 — ARKANSAS PESTICIDE USE AND APPLICATION ACT

SECTION.

- 20-20-201. Title.
- 20-20-202. Legislative intent.
- 20-20-203. Definitions.
- 20-20-204. Penalties.
- 20-20-205. Administration of subchapter by State Plant Board.
- 20-20-206. State Plant Board — Powers and duties.
- 20-20-207. Licenses — Classification — Standards.
- 20-20-208. Licenses — Requirements generally — Exception.
- 20-20-209. Licenses — Commercial applicators — Application.
- 20-20-210. Licenses — Noncommercial applicators.
- 20-20-211. Licenses — Private applicators.
- 20-20-212. Licenses — Pilots.

SECTION.

- 20-20-213. Licenses — Pesticide dealers.
- 20-20-214. Denial, suspension, revocation, or modification of licenses or permits — Grounds.
- 20-20-215. Commercial and noncommercial applicator — Records.
- 20-20-216. Handling of pesticides and containers — Rules and regulations.
- 20-20-217. Inspection and licensing of equipment.
- 20-20-218. Reports of accidents or incidents — Claims.
- 20-20-219. Enforcement.
- 20-20-220. Subpoenas authorized.
- 20-20-221. Judicial review.
- 20-20-222. Intergovernmental cooperation.

SECTION.

20-20-223. Reciprocal agreements.
 20-20-224. Information and instruction.
 20-20-225. Disposition of funds.

SECTION.

20-20-226. State preemption.
 20-20-227. Penalties for use inconsistent
 with labeling.

Cross References. Pesticide control,
 § 2-16-401 et seq.

Effective Dates. Acts 1975, No. 389,
 § 29: effective date clause provided: "For
 the purposes of adopting rules and regu-
 lations and/or qualifying applicators,
 dealers, and pilots the act shall become
 effective upon becoming law. For other
 purposes this act shall take effect and be
 in force from and after October 21, 1976;
 provided however, that any license or per-
 mit issued prior to December 31, 1976,
 shall have an expiration date of December
 31, 1977." Approved March 12, 1975.

Acts 1993, No. 815, § 6: emergency
 failed to pass. Emergency clause provided:
 "It is hereby found and determined by the

General Assembly that present state law
 regulating the labeling, sale, transporta-
 tion, use and disposal of pesticides may
 not preempt local regulation relating to
 pesticides; that local regulation could cre-
 ate serious confusion and problems; that
 this act is designed to prohibit local regu-
 lation of the labeling, sale, transportation,
 use and disposal of pesticides except to the
 extent specifically authorized by state law
 and should be given effect as soon as
 possible. Therefore, an emergency is
 hereby declared to exist and this act being
 necessary for the preservation of the pub-
 lic peace, health and safety shall be in full
 force and effect from and after its passage
 and approval."

RESEARCH REFERENCES

ALR. Exterminator's tort liability for
 personal injury or death directly resulting
 from operations. 29 ALR 4th 987.

Liability of termite or other pest control
 or inspection contractor for work or repre-
 sentations. 32 ALR 4th 682.

20-20-201. Title.

This subchapter shall be cited as the "Arkansas Pesticide Use and Application Act".

History. Acts 1975, No. 389, § 1;
 A.S.A. 1947, § 77-251.

20-20-202. Legislative intent.

(a) The purpose of this subchapter is to regulate in the public interest the distribution, use, and application of pesticides to control pests.

(b) Pesticides perform a valuable role in protecting humans and the environment, including agricultural production, from insects, rodents, weeds, and other forms of life which may be pests, but it is essential to the public health and welfare that they be used properly to prevent unreasonable adverse effects on humans and the environment.

(c) It is deemed necessary to provide for regulation of the distribu-
 tion, use, and application of these pesticides.

History. Acts 1975, No. 389, § 3;
A.S.A. 1947, § 77-253.

20-20-203. Definitions.

As used in this subchapter:

(1) "Animal" means all vertebrate and invertebrate species including, but not limited to, humans and other mammals, birds, fish, and shellfish;

(2) "Beneficial insects" means those insects that during their lifecycle are effective pollinators of plants, are parasites or predators of pests, or are otherwise beneficial;

(3) "Certified applicator" means any individual who is certified under this subchapter to use or supervise the use of any restricted-use pesticide which is restricted to use by certified applicators;

(4) "Commercial applicator" means:

(A) A certified applicator whether or not he or she is a private applicator with respect to some uses who is engaged in the business and uses or supervises the use of any pesticide classified for restricted use or any other pesticide for any purpose on any lands or property other than as provided by subdivision (4); or

(B) Any person engaged in the business of aerial application of seeds or fertilizers on the lands of another;

(5) "Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission;

(6) "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue;

(7) "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver for shipment, receive, deliver, or offer to deliver pesticides in this state;

(8) "Environment" includes water, air, land, and all plants and humans and other animals living therein, and the interrelationships which exist among these;

(9)(A) "Equipment" means any type of ground, water, or aerial equipment or contrivance using motorized, mechanical, or pressurized power and used to apply any pesticide on land and on anything that may be growing, habitating, or stored on or in land.

(B) "Equipment" shall not include any pressurized hand-sized household apparatus used to apply any pesticide or any equipment or contrivance of which the person who is applying the pesticide is the source of power or energy in making the pesticide application;

(10) "EPA" means the United States Environmental Protection Agency;

(11) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, as amended;

(12) "Fungus" means any non-chlorophyll-bearing thallophytes, that is, any non-chlorophyll-bearing plant of a lower order than mosses and liverworts, as for example, rust, smut, mildew, mold, yeast, and

bacteria, except those on or in living humans or other animals and except those on or in processed food, beverages, or pharmaceuticals;

(13) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, and comprising six-legged usually winged forms, as for example, beetles, bugs, bees, and flies, and to other allied classes of arthropods whose members are wingless and usually have more than six (6) legs, as for example, spiders, mites, ticks, centipedes, and wood lice;

(14) "Labeling" means all labels and all other written, printed, or graphic matter:

(A) Accompanying the pesticide or device at any time; or

(B) To which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications in the United States Environmental Protection Agency, the United States Department of Agriculture, the United States Department of the Interior, the United States Department of Health and Human Services, state experiment stations, state agricultural colleges, and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides;

(15) "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances, and machinery appurtenant thereto or situated thereon, fixed or mobile, including and used for transportation;

(16) "License" or "permit" means a written document issued by the State Plant Board or its authorized agent authorizing the purchase, possession, or use of certain pesticides, restricted-use pesticides, or state restricted-use pesticides;

(17) "Nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle and inhabiting soil, water, plants, or plant parts. They may also be called nemas or eelworms;

(18) "Noncommercial applicator" means firms, persons, or government agencies that use, supervise the use, or demonstrate the use of any pesticide classified for restricted use and that do not qualify as a private applicator under subdivision (24) of this section nor require a commercial applicator's license under subdivision (4) of this section;

(19) "Person" means any individual, partnership, association, fiduciary, corporation, or any organized group of persons whether incorporated or not;

(20) "Pest" means:

(A) Any insect, rodent, nematode, fungus, weed; or

(B) Any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism except viruses, bacteria, or other microorganisms on or in living human or other living animals, which the Environmental Protection Agency declares to be a pest under section 25(c)(1) of the Federal Insecticide, Fungicide, and

Rodenticide Act, or which the board declares to be a pest under § 20-20-206(e);

(21) "Pesticide" means:

(A) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and

(B) Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant;

(22) "Pesticide dealer" means any person who distributes restricted-use pesticides or pesticides whose uses or distribution are further restricted by the board by regulation;

(23) "Plant regulator" means any substance or mixture of substances intended through physiological action for accelerating or retarding the rate of growth or rate of maturation or for otherwise altering the behavior of plants or the produce thereof but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments;

(24) "Private applicator" means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or her or his or her employer or on the property of another person if applied without compensation other than trading of personal services between producers of agricultural commodities;

(25) "Restricted-use pesticide" means any pesticide or pesticide use classified for restricted use by the Administrator of the Environmental Protection Agency;

(26) "State restricted-use pesticide" means any pesticide or pesticide use which, when used as directed or in accordance with a widespread and commonly recognized practice, the board determines, subsequent to a hearing, requires additional restrictions for that pesticide or pesticide use to prevent unreasonable adverse effects on the environment including humans, land, beneficial insects, animals, crops, and wildlife other than pests;

(27) "Supervise" or "under the direct supervision of" means the act or process whereby the application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator who is responsible for the actions of that person and who is available when needed, even though the certified applicator is not physically present at the time and place the pesticide is applied;

(28) "Unreasonable adverse effects on the environment" means any unreasonable risk to humans or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide;

(29) "Weed" means any plant which grows where not wanted; and

(30) "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this subchapter, pests, including, but not limited to, mammals, birds, and aquatic life.

History. Acts 1975, No. 389, § 4; A.S.A. 1947, § 77-254; Acts 1995, No. 85, § 1; 1995, No. 110, § 1.

U.S. Code. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), referred to in this section, is codified at 7 U.S.C. § 136 et seq.

Section 25(c)(1) of FIFRA, referred to in this section, is codified at 7 U.S.C. § 136w(c)(1).

20-20-204. Penalties.

(a)(1) Any commercial or noncommercial applicator, dealer, or pilot who violates any provision of this subchapter or the regulations adopted under this subchapter shall be guilty of a violation and upon conviction shall be punished for the first offense by a fine of not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000) and for the second and any additional offense by a fine of not less than five hundred dollars (\$500) and not more than two thousand dollars (\$2,000).

(2)(A) Any private applicator who violates any provision of this subchapter or the regulations adopted under this subchapter subsequent to having received a written warning from the State Plant Board for a prior violation shall be guilty of a violation and upon conviction shall be punished by a fine of not less than one hundred dollars (\$100) and not more than five hundred dollars (\$500) for each offense.

(B) An offense committed more than three (3) years after a previous conviction or written warning shall be considered as a first offense.

(b) No state court shall allow the recovery of damages from administrative action taken if the court finds that there was probable cause for such an action.

History. Acts 1975, No. 389, § 19; A.S.A. 1947, § 77-269; Acts 2005, No. 1994, § 118.

“hereunder” and “violation” for “misdemeanor” in (a)(1) and (a)(2)(A).

Amendments. The 2005 amendment substituted “under this subchapter” for

Cross References. Penalties for use inconsistent with labeling, § 20-20-227.

20-20-205. Administration of subchapter by State Plant Board.

(a) This subchapter shall be administered by the State Plant Board.

(b) The functions vested in the board by this subchapter shall be considered to be delegated to the employees of the board or its authorized representatives.

History. Acts 1975, No. 389, §§ 2, 23; A.S.A. 1947, §§ 77-252, 77-273.

20-20-206. State Plant Board — Powers and duties.

(a)(1) The State Plant Board shall administer and enforce this subchapter and shall have authority to issue regulations after a public hearing following due notice to all interested persons to carry out the provisions of this subchapter. When the board finds it necessary to carry

out the purpose and intent of this subchapter, regulations may relate to the time, place, manner, amount, concentration, or other conditions under which pesticides may be distributed or applied and may restrict or prohibit use of pesticides in designated areas during specified periods of time to prevent unreasonable adverse effects by drift or misapplication to:

- (A) Plants, including forage plants, or adjacent or nearby lands;
- (B) Wildlife in the adjoining or nearby areas;
- (C) Fish and other aquatic life in waters in reasonable proximity to the area to be treated; and
- (D) Humans, animals, or beneficial insects.

(2) In issuing regulations, the board shall give consideration to pertinent research findings and recommendations of other agencies of this state, the federal government, or other reliable sources. The board may by regulation require that notice of a proposed application of a pesticide be given to owners or persons in control of lands adjoining the property to be treated or in the immediate vicinity thereof if it finds that the notice is necessary to carry out the purpose of this subchapter.

(b)(1) For the purpose of uniformity and in order to enter into cooperative agreements, the board shall consider as restricted-use pesticides those uses or pesticides classified as such by the Environmental Protection Agency. In addition, the board may declare certain pesticides or pesticide uses as state restricted-use pesticides when after investigation it finds and determines the pesticides or pesticide uses to be injurious to humans, animals, or vegetation other than the pest or vegetation which it is intended to destroy or otherwise requires additional restrictions under the conditions set forth in § 20-20-203(25).

(2) The sale or distribution of pesticides for such uses in Arkansas or their use in pest control or other operation is prohibited, except in accordance with such rules and regulations as may be made by the board after a public hearing.

(3) The rules and regulations shall include rules and regulations which prescribe the time when and the conditions under which the materials may be used in different areas of the state.

(4) The board in its rules and regulations may charge inspection, permit, and license fees sufficient to cover the cost of enforcement of this subsection.

(c) Regulations adopted under this subchapter shall not permit any pesticide use which is prohibited by the Federal Insecticide, Fungicide, and Rodenticide Act and regulations or orders issued under the Federal Insecticide, Fungicide, and Rodenticide Act.

(d) Regulations adopted under this subchapter as to applicators of restricted-use pesticides as designated under the Federal Insecticide, Fungicide, and Rodenticide Act shall not be inconsistent with the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act and regulations promulgated under the Federal Insecticide, Fungicide, and Rodenticide Act.

(e) After notice and opportunity for hearing, the board may declare as a pest any form of plant or animal life, other than humans and other

than bacteria, virus, and other microorganisms on or in living humans or other living animals, which is injurious to health or the environment.

(f) In order to comply with section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act, the board may make such reports to the Environmental Protection Agency in such form and containing such information as the agency may from time to time require.

History. Acts 1975, No. 389, § 5; **U.S. Code.** For codification of FIFRA, A.S.A. 1947, § 77-255. see note to § 20-20-203.

20-20-207. Licenses — Classification — Standards.

(a)(1) The State Plant Board may classify or subclassify commercial and noncommercial licenses to be issued under this subchapter as may be necessary for the effective administration and enforcement of this subchapter. The classifications may include, but not be limited to:

- (A) Agricultural;
- (B) Right-of-way;
- (C) Forest;
- (D) Aquatic; and
- (E) Regulatory pesticide applicators.

(2) Separate subclassifications may be specified as to ground, aerial, or manual methods used by any licensee to apply pesticides or as to the use of pesticides to control insects, plant diseases, rodents, or weeds.

(3) Each classification shall be subject to separate testing procedures and requirements.

(b)(1) The board in promulgating regulations under this subchapter shall prescribe standards for the licensing of applicators of pesticides.

(2) The standards shall relate to the use and handling of the pesticides or to the use and handling of the pesticide or class of pesticide covered by the individual's license and shall be relative to the hazards involved.

(3) In determining standards, the board shall consider:

(A) The characteristics of the pesticide formulation such as the acute dermal and inhalation toxicity and the persistence, mobility, and susceptibility to biological concentration;

(B) The use experience which may reflect an inherent misuse or an unexpected good safety record which does not always follow laboratory toxicological information;

(C) The relative hazards of patterns of use such as granular soil applications, ultra low volume or dust aerial applications, or air blast sprayer applications; and

(D) The extent of the intended use.

(c) Further, the board is authorized to adopt standards in conformance with and at least equal to those prescribed by the Environmental Protection Agency and such additional standards as it deems necessary.

History. Acts 1975, No. 389, § 6; A.S.A. 1947, § 77-256.

20-20-208. Licenses — Requirements generally — Exception.

(a) No person shall use or supervise the use of any restricted use pesticide which is restricted to use by certified applicators without that person's first complying with the licensing requirements pursuant to §§ 20-20-209 — 20-20-211, § 20-20-217, or other restrictions as determined by the State Plant Board as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other person, for that specific pesticide use.

(b) No person working under the direct supervision of a certified applicator in accordance with § 20-20-203(26) shall be considered in violation of this section.

History. Acts 1975, No. 389, § 7;
A.S.A. 1947, § 77-257.

20-20-209. Licenses — Commercial applicators — Application.

(a) No commercial applicator shall engage in the business of applying restricted-use or other pesticides or the aerial application of seed or fertilizers to the lands of another at any time without a commercial applicator's license issued by the State Plant Board. Application for a license shall be made in writing to the board on a designated form obtained from the board. Each application for a license shall contain information regarding the applicant's qualifications, the proposed operations, and the license classification for which the applicant is applying, and the application shall include the following:

- (1) The full name of the person applying for the license;
- (2) If different from that in subdivision (a)(1) of this section, the full name of the individual qualifying under subsection (b) of this section;
- (3) If the applicant is a person other than an individual, the full name of the firm, partnership, association, corporation, or group;
- (4) The principal business address of the applicant in this state or elsewhere;
- (5)(A) The name and address of a person, who may be the Secretary of State, whose domicile is in this state and who is authorized to receive and accept services of summons and legal notice of all kinds for the applicant.

(B) Any nonresident applying for a license under this subchapter shall file a written and certified power of attorney designating an Arkansas resident or the Secretary of State as the agent of the nonresident upon whom service of process may be had in the event of any suit against the nonresident person. The power of attorney shall be so prepared and in such form as to render effective the jurisdiction of the courts of the State of Arkansas over the nonresident applicant.

(C) The Secretary of State shall be allowed such fees therefor as provided by law for designating resident agents;

(6) A description of any equipment used by the applicant to apply pesticides; and

(7) Any other necessary information prescribed by the board.

(b) The board shall not issue a commercial applicator's license until the individual named in subdivision (a)(2) of this section has qualified by passing an examination to demonstrate to the board his or her knowledge of how to apply pesticides under the classifications applied for and his or her knowledge of the nature and effect of pesticides he or she may apply under the classifications. The scope of the examination may be prescribed by regulation.

(c)(1) The board shall issue a commercial applicator's license limited to the classifications for which the applicant is qualified if:

(A) The board finds the applicant qualified to apply pesticides in the classifications he or she has applied for;

(B) The applicant files evidence of financial responsibility required under subsection (d) of this section;

(C) The applicant applying for a license to engage in aerial application of pesticides has met all of the requirements of the Federal Aviation Administration; and

(D) The applicant has paid the license, test, and equipment fees prescribed by the board in its regulations.

(2)(A) The license shall expire December 31 of each year unless it has been revoked or suspended prior thereto by the board for cause.

(B) A license shall be automatically invalidated if a commercial applicator is at any time or for any reason left without an individual qualified under subsection (b) of this section.

(3) The board may limit the license of the applicant to the use of certain pesticides, to certain areas, or to certain types of equipment if the applicant is only so qualified.

(4) If a license is not issued as applied for, the board shall inform the applicant in writing of the reasons therefor.

(d)(1) The board shall not issue a commercial applicator's license until the applicant has furnished evidence of financial responsibility with the board consisting of one (1) of the following:

(A) A letter of credit from an Arkansas bank guaranteeing financial responsibility;

(B) A surety bond;

(C) An escrow account with an Arkansas bank; or

(D) An insurance policy or certification thereof of an insurer or surplus lines broker authorized to do business in this state insuring the commercial applicator and any of his or her agents against liability resulting from the operations of the commercial applicator, provided that the insurance is not applied to damages or injury to agricultural crops, plants, or land being worked upon by the commercial applicator.

(2)(A) The amount of liability as provided for in this section shall not be less than that set by the board for each property damage and public liability including loss or damage arising out of actual use of any pesticide. The amount of liability shall be maintained at not less than that sum at all times during the licensing period.

(B) The board shall be notified ten (10) days prior to any reduction in liability.

(C) The board shall have authority to set deductible amounts on financial responsibility.

(3) Should the liability furnished become unsatisfactory, the applicant shall upon notice immediately execute new liability. If he or she fails to do so, the board shall cancel his or her license and give him or her notice of the fact, and it shall be unlawful thereafter for the person to engage in the business of applying pesticides until the liability is brought into compliance with the requirements of this section and his or her license is reinstated.

(4)(A) Nothing in this subchapter shall be construed to relieve any person from liability for any damages to the person or lands of another caused by the use of pesticides even though the use conforms to the rules and regulations of the board.

(B) The violation of any of the provisions of this subchapter by any commercial applicator shall be prima facie evidence of negligence on the part of the person, firm, or corporation committing the violation, and the negligence shall be imputable as provided by existing law.

(e) The board may renew any applicant's license under the classification for which the applicant is licensed, subject to reexamination for any additional knowledge that may be required to ensure a continuing level of competence and ability to use pesticides safely and properly due to changing technology.

(f)(1) The provisions of this section relating to licenses and requirements for their issuance do not apply to a person applying pesticides for his or her neighbors, provided that he or she operates and maintains pesticide application equipment for his or her own use, he or she is not engaged in the business of applying pesticides for hire and does not publicly hold himself or herself out as a pesticide applicator, and he or she operates his or her pesticide application equipment only in the vicinity of his or her owned or rented property and for the accommodation of his or her neighbors.

(2) However, when the person uses or supervises the use of a restricted-use pesticide, the person shall comply with the requirements of § 20-20-210 or § 20-20-211.

History. Acts 1975, No. 389, § 8; 1977, No. 758, § 1; A.S.A. 1947, § 77-258.

20-20-210. Licenses — Noncommercial applicators.

(a) IN GENERAL.

(1) No noncommercial applicator shall use, supervise the use of, or demonstrate the use of a restricted-use pesticide without a noncommercial applicator's license issued by the State Plant Board.

(2) Application for the license shall be made on forms obtained from the board and shall contain information regarding the applicant's qualifications, the proposed operation, the license classification applied for, and the full name of the individual qualified or to be qualified by passing the examination described in § 20-20-209(b).

(3) If the board finds the applicant qualified to apply pesticides in the classifications applied for and if the applicant has paid testing and license fees required by regulation, the board shall issue a noncommercial applicator's license limited to the activities and classifications applied for.

(4) The license shall expire December 31 of each year unless it has been suspended or revoked prior thereto by the board for cause.

(5) A license shall be automatically invalidated if a noncommercial applicator is at any time or for any reason left without an individual qualified under this section.

(6) If the board does not qualify the noncommercial applicator under this section, the board shall inform the applicant in writing of the reasons therefor.

(7)(A) Fees may be waived for state, municipal, or other governmental agencies and their designated employees qualifying by examination.

(B) Noncommercial applicators shall be subject to legal recourse by any person damaged as the result of the application of any pesticide by the applicator.

(C) The violation of any of the provisions of this subchapter by any noncommercial applicator shall be prima facie evidence of negligence on the part of the person, firm, or corporation committing the violation, and such negligence shall be imputable as provided by existing law.

(b) LICENSE RENEWAL. The board may renew the applicant's license under the classifications for which the applicant is licensed, subject to reexamination for any additional knowledge that may be required to ensure a continuing level of competence and ability to use restricted-use pesticides safely and properly due to changing technology.

(c) EXEMPTION. This section shall not apply to persons conducting laboratory research involving restricted-use pesticide, and doctors of medicine and doctors of veterinary medicine applying restricted-use pesticides as drugs or medication during the course of their normal practice.

History. Acts 1975, No. 389, § 9;
A.S.A. 1947, § 77-259.

20-20-211. Licenses — Private applicators.

(a) IN GENERAL.

(1) No private applicator shall use or supervise the use of any restricted-use pesticide without a private applicator's license issued by the State Plant Board, with the license being conditioned on the applicator's complying with the certification requirements determined by the board as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other persons for the pesticide use.

(2) Application for a license shall be made in writing on a designated form obtained from the board and shall contain the name and address of the applicant, the kind of agricultural commodity to be produced, information regarding the applicant's qualifications and proposed operations, and any other necessary information prescribed by the board.

(b) **CERTIFICATION STANDARDS.** Certification standards to determine the individual's competency with respect to the use and handling of the pesticide or types of pesticides the private applicator is to be certified to use shall be relative to hazards involved. In determining these standards, the board shall take into consideration the standards of the Environmental Protection Agency and is authorized to adopt these standards by regulation.

(c) **LICENSE ISSUANCE.**

(1) If the board finds the applicant competent and if the applicant has paid a minimum application fee of ten dollars (\$10.00) for a one-year license or forty-five dollars (\$45.00) for a five-year license, the board shall issue a private applicator's license limited to the operation described in the application.

(2) The board shall issue licenses for periods of one (1) year or five (5) years at the option of the applicator. Each license shall expire one (1) year or five (5) years from the issue date of the license, whichever is applicable, unless it has been suspended or revoked for cause prior thereto by the board. In order to support the program, the board shall phase in the private applicator's license renewals at the end of the 2001 license period in such a way as to ensure that the program funding is equally distributed over the licensing period.

(3) A license shall be invalidated automatically if a private applicator is at any time or for any reason left without an individual determined to be competent under subsection (b) of this section.

(4) If a license is not issued as applied for, the board shall inform the applicant in writing of the reasons therefor.

(5) Private applicators shall be subject to recourse by any person damaged as a result of the application of any pesticide by the applicator.

(6) The violation of any of the provisions of this subchapter by any private applicator shall be prima facie evidence of negligence on the part of the person, firm, or corporation committing the violation, and this negligence shall be imputable as provided by existing law.

History. Acts 1975, No. 389, § 11; A.S.A. 1947, § 77-261; Acts 2001, No. 242, § 1.

Amendments. The 2001 amendment substituted "a minimum ... license" for

"any fees as may be prescribed by the board to cover the costs of administering this section" in (c)(1); rewrote (c)(2); and made minor grammatical changes in (c)(3) and (c)(6).

20-20-212. Licenses — Pilots.

(a) It shall be unlawful for any pilot to apply by means of an aircraft any pesticide, seed, or fertilizer in this state unless the pilot shall have a current valid license issued by the State Plant Board.

(b) The issuance of the license shall be conditioned on his or her filing an application in the form prescribed by the board stating his or her name and address, his or her Federal Aviation Administration commercial or private pilot's certificate number, and his or her meeting any other conditions as may be set by the board in its regulations.

(c) The application shall be accompanied by a fee as set by the board in its regulations.

(d) Each pilot's license issued under this section shall expire on December 31 of each year.

History. Acts 1975, No. 389, § 12;
A.S.A. 1947, § 77-262.

20-20-213. Licenses — Pesticide dealers.

(a)(1) It shall be unlawful for any person to act in the capacity of a restricted-use pesticides dealer, to advertise as or, assume to act as a dealer of, or to distribute any restricted-use pesticide at any time without first having obtained an annual license from the State Plant Board. This license shall limit distribution of restricted-use pesticides only to persons holding a current commercial applicator, noncommercial applicator, private applicator, or dealer's license.

(2) A license shall be required for each location or outlet located within this state from which such pesticides are distributed. Any manufacturer, registrant, or distributor who has no pesticide dealer outlet licensed within this state and who distributes a restricted-use pesticide directly into this state shall obtain a pesticide dealer license for his or her principal out-of-state location or outlet.

(3) Pesticide dealer licenses shall expire December 31 of each year.

(b) Application for a pesticide dealer's license shall be on a form prescribed by the board and be accompanied by a fee as set by the board in its regulations.

(c)(1) Each licensed dealer outlet shall maintain a record of restricted-use pesticides distributed. The record shall contain the name, address, and license number of the commercial applicator, noncommercial applicator, private applicator, or dealer to whom distributed, the date of distribution, and the name and Environmental Protection Agency registration number of the restricted-use pesticide distributed.

(2) The records shall be kept for a period of two (2) years and shall be available for inspection by the board at reasonable times. Upon request in writing, the board shall immediately be furnished with a copy of the records by the restricted-use pesticide dealer.

(d) This section shall not apply to a commercial pesticide applicator who sells restricted-use pesticides only as an integral part of this pesticide application service when the pesticides are dispensed only through equipment used for the pesticide application or any federal, state, county, or municipal agency which provides pesticides only for its own programs.

(e) Each pesticide dealer shall be responsible for the acts of each person employed by him or her in the solicitation and sale of restricted-

use pesticides and all claims and recommendations for use of restricted-use pesticides. The dealer's license shall be subject to denial, suspension, or revocation after a hearing for any violation of this subchapter whether committed by the dealer or by the dealer's officer, agent, or employee.

History. Acts 1975, No. 389, § 13;
A.S.A. 1947, § 77-263.

20-20-214. Denial, suspension, revocation, or modification of licenses or permits — Grounds.

(a) The State Plant Board may suspend, pending inquiry, for not longer than ten (10) days, and, after opportunity for a hearing, may deny, suspend, revoke, or modify any license or permit or any provision thereof issued under this subchapter if it finds that the applicant or the holder of a license or permit has committed any of the following acts, each of which is declared to be a violation of this subchapter, or has been convicted of a criminal violation of the Federal Insecticide, Fungicide, and Rodenticide Act or has been the subject of a final order assessing a civil penalty for a violation of the Federal Insecticide, Fungicide, and Rodenticide Act:

(1) Made false or fraudulent claims through any media misrepresenting the effect of pesticides or methods to be utilized;

(2) Made a recommendation for use or used a pesticide in a manner inconsistent with the labeling registered with the Environmental Protection Agency or the board for that pesticide or in violation of the Environmental Protection Agency or board restrictions on the use of that pesticide;

(3) Applied known ineffective or improper pesticides;

(4) Operated faulty or unsafe equipment;

(5) Operated in a faulty, careless, or negligent manner;

(6) Neglected or, after notice, refused to comply with the provisions of this subchapter, the rules adopted under this subchapter, or any lawful order of the board;

(7) Refused or neglected to keep and maintain the records required by this subchapter or to make reports when and as required;

(8) Made false or fraudulent records, invoices, or reports;

(9) Engaged in the business of applying a pesticide on the lands of another without having a commercial applicator's license;

(10) Operated unlicensed equipment;

(11) Used fraud or misrepresentation in making application for or renewal of a license, permit, or certification;

(12) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license, permit, or certification;

(13) Aided or abetted a licensed or an unlicensed person to evade the provisions of this subchapter, conspired with such a licensed or an unlicensed person to evade the provisions of this subchapter, or allowed one's license, permit, or certification to be used by another person;

(14) Made false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land;

(15) Impersonated any federal, state, county, or other government official;

(16) Distributed any pesticide labeled for restricted use to any person unless the person or his or her agent has a valid license to use, supervise the use, or distribute restricted-use pesticides; or

(17) Applied any pesticide by aircraft without a pilot's license, or employed a pilot without a license to apply any pesticide by aircraft.

(b) Any person requiring a license or permit under this subchapter shall be subject to the penalties provided for by § 20-20-204.

History. Acts 1975, No. 389, § 18;
A.S.A. 1947, § 77-268.

U.S. Code. For codification of FIFRA,
see note to § 20-20-203.

CASE NOTES

Cited: Arkansas State Plant Bd. v. Bullock, 345 Ark. 373, 48 S.W.3d 516 (2001).

20-20-215. Commercial and noncommercial applicator — Records.

(a) Commercial and noncommercial applicator licensees shall keep and maintain routine operational records containing information on the kinds, amounts, uses, dates, and places of application of pesticides.

(b) The records shall be kept for a period of two (2) years from the date of the application of the pesticide and shall be available for inspection by the State Plant Board at reasonable times.

(c) Upon request in writing, the board shall immediately be furnished with a copy of the records by the commercial or noncommercial applicator.

History. Acts 1975, No. 389, § 10;
A.S.A. 1947, § 77-260.

20-20-216. Handling of pesticides and containers — Rules and regulations.

(a) No person shall transport, store, or dispose of any pesticide or pesticide containers in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, or beneficial insects or to pollute any waterway in any way harmful to any wildlife therein.

(b) The State Plant Board may promulgate rules and regulations governing the storage and disposal of pesticides or pesticide containers. In determining these standards, the board shall take into consideration any regulations issued by the Environmental Protection Agency.

History. Acts 1975, No. 389, § 17;
A.S.A. 1947, § 77-267.

20-20-217. Inspection and licensing of equipment.

(a) The State Plant Board may inspect any equipment used or intended to be used for application of pesticides and may require repairs or other changes before its further use for pesticide application.

(b) Requirements for equipment may be adopted by regulation.

(c) Equipment specified by regulation shall be identified by a decal or similar marking furnished by the board. The decal or marking shall be affixed in a location and manner upon the equipment as prescribed by the board.

(d) Fees for the decal or similar marking shall be prescribed by the board in its regulations.

History. Acts 1975, No. 389, § 8;
A.S.A. 1947, § 77-258.

20-20-218. Reports of accidents or incidents — Claims.

(a) The State Plant Board may by regulation require the reporting of significant pesticide accidents or incidents to a designated state agency.

(b)(1) Any person claiming damages from a pesticide application shall have filed with the board on a form prescribed by the board a written statement claiming that he or she has been damaged. This report shall have been filed within forty-five (45) days after the date that damages occurred. If a growing crop is alleged to have been damaged, the report shall be filed prior to the time that twenty-five percent (25%) of the crop has been harvested.

(2) The statement shall contain, but shall not be limited to, the name of the owner or lessee of the land on which the crop is grown and for which damage is alleged to have occurred and the date on which the alleged damage occurred.

(3) The board shall prepare a form to be furnished to persons to be used in these cases. The form shall contain any other requirements as the board may deem proper.

(4) Upon receipt of the statement, the board shall notify the licensee and the owner or lessee of the land or other person who may be charged with the responsibility of the damages claimed and furnish copies of the statements as may be requested.

(5) The board shall inspect damages whenever possible, and when it determines that the complaint has sufficient merit, it shall make this information available to the person claiming damage and to the person who is alleged to have caused the damage.

(c) The filing of a report or the failure to file a report need not be alleged in any complaint which might be filed in a court of law. The failure to file the report shall not be considered any bar to the maintenance of any criminal or civil action, nor shall the failure to file a report be a violation of this subchapter.

(d) Where damage is alleged to have occurred, the claimant shall permit the board, the licensee, and his or her representatives, such as his or her insurer, to observe within reasonable hours the lands or

nontarget organism alleged to have been damaged in order that the damage may be examined. Failure of the claimant to permit observation and examination of the damaged lands shall automatically bar the claim against the licensee.

History. Acts 1975, No. 389, § 14;
A.S.A. 1947, § 77-264.

20-20-219. Enforcement.

(a)(1) For the purpose of carrying out the provisions of this subchapter, the State Plant Board may enter upon any public or private premises at reasonable times, in order to:

(A) Have access for the purpose of inspecting any equipment subject to this subchapter;

(B) Inspect or sample lands actually or reported to be exposed to pesticides and lands from which the pesticides may have originated;

(C) Inspect storage or disposal areas;

(D) Inspect or investigate complaints of injury to humans or land;

(E) Sample pesticides being applied or to be applied; and

(F) Observe the use and application of pesticides.

(2) Should the board be denied access to any land where access was sought for the purposes set forth in this subchapter, it may apply to any court of competent jurisdiction for a search warrant authorizing access to the land for the purposes set forth in this subchapter. Upon such an application, the court may issue the search warrant for the purposes requested.

(b)(1) With or without the aid and advice of the prosecuting attorney, the board is charged with the duty of enforcing the requirements of this subchapter and any rules or regulations issued pursuant to it.

(2) If a prosecuting attorney fails or refuses to act on behalf of the board, the Attorney General may so act.

(c) The board may apply to any court of competent jurisdiction for and the court upon hearing and for cause shown may grant a temporary or permanent injunction restraining any person from violating any provisions of this subchapter, or of the rules and regulations made under authority of this subchapter, the injunction to be without bond.

History. Acts 1975, No. 389, § 21;
A.S.A. 1947, § 77-271.

20-20-220. Subpoenas authorized.

The State Plant Board may issue subpoenas to compel the attendance of witnesses or production of books, documents, and records anywhere in this state in any hearing affecting the authority or privilege granted by a license, certification, or permit issued under this subchapter.

History. Acts 1975, No. 389, § 20;
A.S.A. 1947, § 77-270.

20-20-221. Judicial review.

(a) Any person aggrieved by any action of the State Plant Board may obtain a review thereof by filing in the circuit court within thirty (30) days of notice of the action a written petition praying that the action of the board be set aside.

(b) A copy of the petition shall immediately be delivered to the board, and within thirty (30) days thereafter, the board shall certify and file in the court a transcript of any record pertaining thereto, including a transcript of evidence received. The court shall then have jurisdiction to affirm, set aside, or modify the action of the board, except that the findings of the board as to the facts, if supported by substantial evidence, shall be conclusive.

History. Acts 1975, No. 389, § 22;
A.S.A. 1947, § 77-272.

20-20-222. Intergovernmental cooperation.

The State Plant Board may cooperate with, receive grants-in-aid from, and enter into agreements with any agency of the federal government, of this state or its subdivisions, or with any agency of another state to obtain assistance in the implementation of this subchapter, in order to:

- (1) Secure uniformity of regulations;
- (2) Cooperate in the enforcement of the federal pesticide control laws through the use of state or federal personnel and facilities and to implement cooperative enforcement programs;
- (3) Develop and administer state plans for licensing of certified applicators consistent with federal standards;
- (4) Contract for training with other agencies for the purpose of training licensed applicators;
- (5) Contract for monitoring pesticides for the national plan;
- (6) Prepare and submit state plans to meet federal certification standards, as provided for in section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act; and
- (7) Regulate certified applicators.

History. Acts 1975, No. 389, § 15; **U.S. Code.** For codification of FIFRA,
A.S.A. 1947, § 77-265. see note to § 20-20-203.

20-20-223. Reciprocal agreements.

The State Plant Board may waive all or part of the examination requirements provided for in §§ 20-20-209 — 20-20-211 and 20-20-217 on a reciprocal basis with any other state which has substantially the same standards and so long as out-of-state applicators are made subject to enforcement procedures provided in this subchapter to the same extent as those applicators examined and certified in this state.

History. Acts 1975, No. 389, § 16;
A.S.A. 1947, § 77-266.

20-20-224. Information and instruction.

In cooperation with the University of Arkansas or other educational institutions, the State Plant Board may publish information and conduct short courses of instruction in the areas of knowledge required by this subchapter or the regulations adopted pursuant to this subchapter.

History. Acts 1975, No. 389, § 24;
A.S.A. 1947, § 77-274.

20-20-225. Disposition of funds.

All moneys received by the State Plant Board under the provisions of this subchapter and the regulations adopted pursuant to this subchapter shall be deposited into the State Plant Board Fund of the State Treasury and be used for carrying out the provisions of this subchapter.

History. Acts 1975, No. 389, § 25;
A.S.A. 1947, § 77-275.

20-20-226. State preemption.

(a) Except as otherwise authorized in this subchapter, no city, county, or other political subdivision of the state shall adopt any ordinance, rule, or regulation regarding the registration, labeling, distribution, sale, handling, use, application, transportation, or disposal of pesticides.

(b) This section shall not affect the validity of any ordinance, rule, or regulation regarding the registration, labeling, distribution, sale, handling, use, application, transportation, or disposal of pesticides adopted prior to March 1, 1993.

History. Acts 1993, No. 815, §§ 1, 2.

20-20-227. Penalties for use inconsistent with labeling.

(a) Any person who uses a pesticide in a manner inconsistent with its labeling is subject to the jurisdiction of the State Plant Board and its statutes, rules, and orders over which it has regulatory authority and may be subject to denial, suspension, revocation, or modification of a license or permit under § 20-20-214.

(b) Any person who knowingly uses a pesticide in a manner inconsistent with its labeling shall be guilty of a violation and upon

conviction shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

History. Acts 1995, No. 85, § 2; 1995, No. 110, § 2; 2005, No. 1994, § 119.

A.C.R.C. Notes. Pursuant to § 1-2-207, this section is set out above as enacted by Acts 1995, No. 110. This section was also enacted by Acts 1995, No. 85, to read as follows: “(a) Any person who uses a pesticide in a manner inconsistent with its labeling is subject to the jurisdiction of the State Plant Board and its statutes, rules, and orders over which it has regulatory authority and may be subject to denial, suspension, revocation, or modification of a license or permit under § 20-20-214.

“ (b) Any person who knowingly uses a pesticide in a manner inconsistent with its labeling is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).”

Amendments. The 2005 amendment, in (b), substituted “labeling” for “labelling” and “violation” for “misdemeanor.”

SUBCHAPTER 3 — PESTICIDES AND CHEMICALS SAFE FOR CHILDREN HAND-HARVESTING CROPS

SECTION.

20-20-301. Approved chemicals — Safe reentry times.

SECTION.

20-20-302. Assessment fees.

20-20-303. Hand-harvesting by children.

Effective Dates. Acts 1993, No. 983, § 6: Apr. 9, 1993. Emergency clause provided: “It is hereby found and determined by the General Assembly that minor children employed in the harvesting of crops need additional protection from agricultural chemicals applied to those crops; this act will provide more protection, and

therefore this act should go into effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

20-20-301. Approved chemicals — Safe reentry times.

(a) The Director of the Division of Health of the Department of Health and Human Services may establish by regulation a list of approved pesticides and other agricultural chemicals which are safe for the occupational exposure of children twelve (12) and thirteen (13) years of age employed in hand-harvesting short-season crops.

(b) The director also may establish by regulation safe reentry times for children twelve (12) and thirteen (13) years of age so employed.

History. Acts 1993, No. 983, § 1.

20-20-302. Assessment fees.

(a) Any employer, individual, corporation, group, or association which proposes the approval of any pesticide or other agricultural chemical for inclusion on this list shall pay the Division of Health of the

Department of Health and Human Services a fee for conducting any necessary study or risk assessment.

(b) The fee shall be established by regulation of the division and shall be deposited into the State Treasury to the Public Health Fund Account.

History. Acts 1993, No. 983, § 1.

20-20-303. Hand-harvesting by children.

Children twelve (12) years of age and older may be employed to hand-harvest short-season crops, provided that:

(1) School is not in session;

(2) Written parental consent has been obtained by the employer;

(3) An employment certificate has been obtained from the Director of the Department of Labor pursuant to § 11-6-109;

(4) No pesticide or other agricultural chemical has been used on the crop except those approved by the Division of Health of the Department of Health and Human Services pursuant to § 20-20-301; and

(5) Any pesticide or other agricultural chemical used on the crop has been applied and utilized in compliance with the worker protection standards established by the Environmental Protection Agency and the division.

History. Acts 1993, No. 983, § 2.

CHAPTER 21 RADIATION PROTECTION

SUBCHAPTER.

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5. NUCLEAR PLANNING AND RESPONSE GRANTS.
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Cross References. Low-level radioactive waste, § 8-8-201 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

SUBCHAPTER 2 — IONIZING RADIATION

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Effective Dates. Acts 1975, No. 382, § 5: effective 90 days after passage and approval.

Acts 1985, No. 554, § 3: Mar. 25, 1985. Emergency clause provided: "It is hereby found and determined by the Seventy-Fifth General Assembly that the maintenance and reporting of personnel radiation exposure records is necessary for the preservation of the public and occupation health and safety of the citizens of this State. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 504, § 4: Apr. 1, 1987.

Emergency clause provided: "It is hereby found and determined by the General Assembly that due to current revenue short falls the services offered by the Department of Health to the citizens of this State are threatened; that an equitable method of maintaining these services is to provide for a fee to be paid by those citizens who request the assistance of the State Department of Health; that this Act is designed to provide for the collection of such fees and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

20-21-201. Declaration of policy.

It is the policy of the State of Arkansas in furtherance of its responsibility to protect the occupational and public health and safety, to protect the environment, and to further of the industrial and economic growth of the state:

(1) To institute and maintain a regulatory program for sources of ionizing radiation so as to provide:

(A) Compatibility and consistency with the standards and regulatory programs of the federal government;

(B) A single effective system of regulation within the state; and

(C) A system consonant insofar as possible with those of other states; and

(2) To institute and maintain a program to permit development and utilization of sources of ionizing radiation for peaceful purposes consistent with the health and safety of the public.

History. Acts 1961 (2nd Ex. Sess.), No. 8, § 1; 1983, No. 19, § 1; A.S.A. 1947, § 82-1512.

20-21-202. Purpose.

It is the purpose of this subchapter to effectuate the policies set forth in § 20-21-201 by providing a program:

(1) Of effective regulation of sources of ionizing radiation for the protection of the occupational and public health and safety;

(2) To promote an orderly regulatory pattern within the state, among the states, and between the federal government and this state and to facilitate intergovernmental cooperation with respect to use and regulation of sources of ionizing radiation to the end that duplication of regulation may be minimized;

(3) To establish procedures for assumption and performance of certain regulatory responsibilities with respect to by-product, source, and special nuclear materials and radiation equipment and to provide for registration of persons providing radiation machine installation; and

(4) To permit maximum utilization of sources of ionizing radiation consistent with the health and safety of the public.

History. Acts 1961 (2nd Ex. Sess.), No. 8, § 2; 1983, No. 19, § 2; A.S.A. 1947, § 82-1513.

20-21-203. Definitions.

As used in this subchapter:

(1) "Accelerator or particle accelerator, medical" means a device used to impart kinetic energy of not greater than one hundred megaelectronvolts (100 MeV) to electrically charged particles such as electrons, protons, deuterons, and helium ions, and which is used for medical purposes;

(2) "Accelerator or particle accelerator, nonmedical" means a device used to impart kinetic energy of not greater than one hundred megaelectronvolts (100 MeV) to electrically charged particles such as electrons, protons, deuterons, and helium ions, and which is not used for medical purposes;

(3) "Accelerator-produced radioactive material" means any material made radioactive, so as to emit radiation spontaneously, by a particle accelerator;

(4) "Agency" means the State Radiation Control Agency;

(5) "Assembler" means any person who is engaged in the business of installing or offering to install radiation machines or components associated with radiation machines;

(6) "Board" means the State Board of Health;

(7) "By-product material" means any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material;

(8) "Calibration sources — consulting services" means any individual, group of individuals, or company possessing a sealed radioactive source used for the calibration of radiation-measuring instruments or radiation machines as authorized by a radioactive material license;

(9) "Category I-A hospital" means a hospital or medical center that meets one (1) of the following criteria:

(A) Has a nuclear medicine department, one (1) or more X-ray machines, and one (1) or more particle accelerator units; or

(B) Has a nuclear medicine department, eleven (11) or more X-ray machines, and one (1) or more teletherapy units;

(10) "Category I-B hospital" means a hospital or medical center that has a nuclear medicine department, has ten (10) or fewer X-ray machines, and has one (1) or more teletherapy units;

(11) "Category II-A hospital" means a hospital or medical center that meets one (1) of the following criteria:

(A) Has a nuclear medicine department and eleven (11) or more X-ray machines;

(B) Has a nuclear medicine department and one (1) or more particle accelerator units;

(C) Has one (1) or more X-ray machines and one (1) or more particle accelerator units; or

(D) Has eleven (11) or more X-ray machines and one (1) or more teletherapy units;

(12) "Category II-B hospital" means a hospital or medical center that meets one (1) of the following criteria:

(A) Has a nuclear medicine department and ten (10) or fewer X-ray machines;

(B) Has a nuclear medicine department and one (1) or more teletherapy units; or

(C) Has ten (10) or fewer X-ray machines and one (1) or more teletherapy units;

(13) "Category III hospital" means a hospital or medical center that meets one (1) of the following criteria:

(A) Has a nuclear medicine department;

(B) Has one (1) or more X-ray machines; or

(C) Has one (1) or more teletherapy units;

(14) "Chiropractor" means a person licensed by the Arkansas State Board of Chiropractic Examiners;

(15) "Civil penalty" means any monetary penalty levied on a licensee or registrant because of violation of statutes, regulations, licenses, or registration certificates but does not include criminal penalties;

(16) "Decommissioning" means final operational activities at a facility to dismantle site structures, to decontaminate site surfaces and remaining structures, to stabilize and contain residual radioactive material, and to carry out any other activities to prepare the site for post-operational care;

(17) "Dental radiographic unit" means any X-ray device that is subject to the requirements for intraoral dental radiographic systems set forth in the rules and regulations for control of sources of ionizing radiation promulgated by the State Board of Health;

(18) "Director" means the Director of the Division of Health of the Department of Health and Human Services;

(19) "Gas chromatograph and X-ray fluorescence devices" means analytical laboratory instruments designed for qualitative and quantitative analysis using radioactive material as a component of the instrument detector or as a fluorescence excitation source;

(20)(A) "General license" means a license effective pursuant to regulations promulgated by the agency without the filing of an application with the Division of Health of the Department of Health and Human Services or the issuance of licensing documents to particular persons to transfer, acquire, own, possess, or use quantities of radioactive material or devices or equipment utilizing radioactive material.

(B) "Specific license" means a license issued to a named person upon application filed pursuant to regulations promulgated under this subchapter to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of radioactive material or equipment utilizing radioactive material.

(C) "Academic broad license" means any radioactive material license issued to a college or university and subject to the special requirements for "specific licenses of broad scope" as set forth in the rules and regulations for control of sources of ionizing radiation promulgated by the State Board of Health.

(D) "Academic radioactive material license" means any radioactive material license issued to a college or university, excluding broad academic licenses;

(21) "High-level radioactive waste" means:

(A) Irradiated reactor fuel;

(B) Liquid wastes resulting from the operation of the first cycle solvent extraction system, or equivalent, and the concentrated wastes from subsequent extraction cycles, or equivalent, in a facility for reprocessing irradiated reactor fuel; and

(C) Solids into which such liquid wastes have been converted;

(22) "Industrial units" means X-ray machines used within the manufacturing industry and other industries and in industrial radiography;

(23) "In vitro laboratory testing" means nonhuman use of radioactive material for laboratory testing in accordance with a general license authorized by the rules and regulations for control of sources of ionizing radiation promulgated by the State Board of Health;

(24) "Ionizing radiation" means gamma rays and X rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other nuclear particles, but it does not include sound or radio waves or visible, infrared, or ultraviolet light;

(25) "Irradiator" means a device or facility which contains and uses sealed sources for the irradiation of objects or materials;

(26) "Low-level radioactive waste" means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or by-product material as defined in Section 11e. (2) of the Atomic Energy Act of 1954;

(27) "Mobile nuclear medicine service" means the transportation and medical use of by-product material and diagnostic instrumentation;

(28) "Naturally occurring radioactive material" means any material of natural origin that emits radiation spontaneously, excluding uranium, thorium, and the tailings produced in their extraction or concentration;

(29) "Nuclear gauge" means a device that uses radioactive material as a means of measurement or testing;

(30) "Nuclear medicine" means human use of radioactive material for diagnostic or therapeutic purposes, not including radioisotope teletherapy;

(31) "Nuclear pharmacy" means a facility licensed by the Arkansas State Board of Pharmacy for the purpose of compounding and dispensing prescription drugs which contain or are intended to be used with radioactive material. In addition, the facility is intended to provide service for more than one (1) medical licensee;

(32) "Others", as used in the contexts of registration, means any X-ray machine which is not otherwise included in the definitions in this section;

(33) "Panoramic wet source storage irradiator" means a controlled human access irradiator in which the sealed source is contained in a storage pool, usually containing water, and in which the sealed source is fully shielded when not in use. The sealed source is exposed within a radiation room that is maintained as inaccessible during use by interlocked controls;

(34) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, of any other state, or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, other than the United States Atomic Energy Commission, or any successor thereto, and other than federal government agencies licensed by the United States Atomic Energy Commission, or any successor thereto;

(35) "Physician" means any individual possessing a valid physician's and surgeon's certificate issued by this state;

(36) "Podiatrist" means a person licensed by the Arkansas Board of Podiatric Medicine;

(37) "Private practice" means any use of radioactive material subject to the requirements for licensing of individual physicians for human

use of radioactive materials as set forth in the rules and regulations for control of sources of ionizing radiation promulgated by the State Board of Health, excluding those installations subject to the requirements for X-ray and electron therapy systems with energies of one megaelectronvolt (1 MeV) and above and for teletherapy as set forth in the same rules and regulations;

(38) "Radiation equipment" means any manufactured product or device or any machine or system which during operation can generate or emit ionizing radiation, except those which emit radiation only from radioactive material;

(39) "Radioactive material" means any material, whether solid, liquid, or gas, which emits radiation spontaneously. "Radioactive material" includes accelerator-produced, by-product, naturally occurring, source, and special nuclear materials;

(40) "Radioactive waste management" means storage, treatment, or disposal of radioactive wastes;

(41) "Radiography" means the examination of the macroscopic structure of materials by nondestructive methods utilizing sources of ionizing radiation;

(42) "Radioisotope teletherapy" means the use of radiation from a sealed radioactive source for medical treatment. This does not include radiation from sealed radioactive sources implanted within individuals or on-surface contact with individuals;

(43) "Reciprocity" means the reciprocal recognition of licenses issued by the United States Nuclear Regulatory Commission or any agreement state other than Arkansas, subject to provisions for reciprocal recognition of licenses as set forth in the rules and regulations for control of sources of ionizing radiation promulgated by the State Board of Health;

(44) "Registration" means registration with the Division of Health of the Department of Health and Human Services by any person possessing any source of ionizing radiation in accordance with rules, regulations, and standards adopted by the division;

(45) "Service personnel" means any person who is engaged in the business of offering or performing:

(A) Repair or service of radiation machines and associated radiation machine components;

(B) Calibration of radiation machines;

(C) Calibration of radiation instrumentation or devices; or

(D) Furnishing personnel dosimetry services to agency licensees or registrants;

(46) "Special nuclear material" means:

(A) Plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Governor declares by order to be special nuclear material after the United States Atomic Energy Commission, or any successor thereto, has determined the material to be such but does not include source material; or

(B) Any material artificially enriched by any of the foregoing but does not include source material;

(47) "Source material" means:

(A) Uranium, thorium, or any other material which the Governor declares by order to be source material after the United States Atomic Energy Commission, or any successor thereto, has determined the material to be such; or

(B) Ores containing one (1) or more of the foregoing materials, in such concentration as the Governor declares by order to be source material after the United States Atomic Energy Commission, or any successor thereto, has determined the material in such concentration to be source material;

(48) "Sources of radiation" means, collectively, radioactive material and radiation equipment;

(49) "Veterinary medicine radiographic systems" means any X-ray device that is subject to the requirements for veterinary medicine radiographic installations set forth in the rules and regulations for control of sources of ionizing radiation promulgated by the State Board of Health;

(50) "Wireline service operation" means any evaluation or mechanical service which is performed in the well-bore, using devices on a wireline; and

(51) "X-ray tube" means any electron tube which is designed to be used primarily for the production of X rays.

History. Acts 1961 (2nd Ex. Sess.), No. 8, § 3; 1983, No. 19, §§ 3, 4; A.S.A. 1947, § 82-1514; Acts 1987, No. 504, § 1; 1995, No. 796, § 1.

U.S. Code. Section 11e. (2) of the Atomic Energy Act of 1954 referred to in this section is codified as 42 U.S.C. § 2014(e).

20-21-204. Penalties.

(a) **CRIMINAL PENALTIES.** Any person who willfully violates any of the provisions of this subchapter or rules, regulations, or orders in effect pursuant thereto shall be punished by a fine of not less than one hundred dollars (\$100) nor more than two thousand dollars (\$2,000) or by imprisonment for not more than six (6) months, or by both fine and imprisonment.

(b) **CIVIL PENALTIES.**

(1) Any person may be subject to a civil penalty, to be imposed by the State Radiation Control Agency, not to exceed five thousand dollars (\$5,000), who:

(A) Violates any licensing or registration provision of this subchapter or any rule, regulation, or order issued under this subchapter, or any term, condition, or limitation of any license or registration certificate issued thereunder; or

(B) Commits any violation for which a license or registration certificate may be revoked under rules or regulations issued pursuant to this subchapter.

(2) If any violation is a continuing one, each day of the violation shall constitute a separate violation for the purpose of computing the applicable civil penalty.

(3) The agency shall have the authority to compromise, mitigate, or remit penalties.

(4) Whenever the agency proposes to subject a person to the imposition of a civil penalty under this subsection, the agency shall notify the person in writing:

(A) Setting forth the date, facts, and nature of each act or omission with which the person is charged;

(B) Specifically identifying the particular provisions of the section, rule, regulation, order, license, or registration certificate involved in the violation; and

(C) Advising of each penalty which the agency proposes to impose and its amount.

(5)(A) The written notice shall be sent by registered or certified mail by the agency to the last known address of the person.

(B) The person so notified shall be granted an opportunity to show in writing, within such reasonable period as the agency shall by rule or regulation prescribe, why the penalty should not be imposed.

(C) The notice shall also advise the person that upon failure to pay the civil penalty subsequently determined by the agency, if any, the penalty may be collected by civil action.

(6)(A) Upon the request of the agency, the Attorney General may institute civil action to collect a penalty imposed pursuant to this subsection.

(B) The Attorney General shall have the exclusive power to compromise, mitigate, or remit such civil penalties as are referred to him or her for collection.

(7)(A) All moneys collected from civil penalties shall be paid to the Treasurer of State for deposit into the general fund.

(B) Moneys collected from civil penalties shall not be used for normal operating expenses of the agency except as appropriations are made from the general fund in the normal budgetary process.

History. Acts 1961 (2nd Ex. Sess.), No. 8, § 14; 1983, No. 19, § 10; A.S.A. 1947, § 82-1525.

20-21-205. Enforcement.

(a)(1) The State Radiation Control Agency or its authorized representative shall for reasonable cause have the power to enter at all reasonable times upon any private or public property for the purpose of determining whether or not there is compliance with or violation of this subchapter and rules and regulations issued under this subchapter.

(2) However, entry into areas under the jurisdiction of the federal government shall be effected only with the concurrence of the federal government or its designated representative.

(b) In the event of an emergency, the agency shall have the authority to impound or order the impounding of sources of ionizing radiation which is in the possession of any person that is not equipped to observe or fails to observe the provisions of this subchapter or any rules or regulations issued under this subchapter.

(c) Whenever in the judgment of the agency any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this subchapter or any rule, regulation, or order issued under this subchapter, the Attorney General, upon written notice thereof by the agency, shall make application to a court of competent jurisdiction for an order enjoining the acts or practices or for an order directing compliance, and upon a showing by the agency that the person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

History. Acts 1961 (2nd Ex. Sess.), No. 8, §§ 6, 11, 13; A.S.A. 1947, §§ 82-1517, 82-1522, 82-1524.

20-21-206. State Radiation Control Agency — Designation — Employees.

(a) The State Board of Health is designated as the State Radiation Control Agency.

(b) The Director of the Division of Health of the Department of Health and Human Services shall designate an individual to perform the functions vested in the agency pursuant to this subchapter.

(c) In accordance with the laws of this state, the agency may employ, compensate, and prescribe the powers and duties of such individuals and consultants as may be necessary to carry out this subchapter.

History. Acts 1961 (2nd Ex. Sess.), No. § 1; 1983, No. 19, §§ 4 [4A], 5; A.S.A. 8, § 4; 1969, No. 115, § 1; 1975, No. 382, 1947, § 82-1515.

20-21-207. State Radiation Control Agency — Powers and duties generally.

For the protection of the occupational and public health and safety, the State Radiation Control Agency shall:

(1) Develop programs for evaluation and control of hazards associated with the use of sources of ionizing radiation;

(2) Develop programs, with due regard for compatibility with federal programs, for regulation of byproduct, source, and special nuclear materials and for regulation of radiation equipment;

(3) Formulate, adopt, promulgate, and repeal codes, rules, and regulations which may provide for licensing or registration relating to control, storage, or disposal of sources of ionizing radiation with due regard for compatibility with the regulatory programs of the federal government;

(4) Issue such orders or modifications as may be necessary in connection with proceedings under this subchapter;

(5) Advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, political subdivisions, and groups concerned with control of sources of ionizing radiation;

(6) Have the authority to accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the federal government and from other sources, public or private;

(7) Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to control of sources of ionizing radiation;

(8) Collect and disseminate information relating to control of sources of ionizing radiation, including:

(A) Maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations;

(B) Maintenance of a file of registrants possessing sources of ionizing radiation requiring registration under this subchapter and any administrative or judicial action pertaining thereto; and

(C) Maintenance of a file of all rules and regulations relating to regulation of sources of ionizing radiations, pending or promulgated, and proceedings thereon;

(9) Be authorized to acquire by purchase, acceptance, or condemnation, for and on behalf of the State of Arkansas, any lands, buildings, and grounds where radioactive byproducts and wastes produced by industrial, medical, agricultural, scientific, or other organizations can be concentrated, stored, or otherwise disposed of in a manner consistent with the public health and safety. The agency may exercise its power to condemn in the manner prescribed by law for condemnation by the Arkansas State Highway and Transportation Department in § 27-67-301 et seq.;

(10)(A) Allow the Director of the Division of Health of the Department of Health and Human Services or his or her authorized representative to require the posting of a bond by licensees to provide funds in the event of abandonment, default, or other inability of the licensee to meet the requirements of the agency. The agency may establish bonding requirements by classes of licensee and by range of monetary amounts. In establishing the requirements, the agency shall give consideration to the potential for contamination, injury, cost of disposal, and reclamation of the property.

(B) The agency shall deposit the proceeds from all forfeited bonds into a special fund known as and called the the "Radiation Reclamation Fund". All moneys in the Radiation Reclamation Fund are appropriated to the agency for use in effectuating protection of public health and safety. Moneys in the Radiation Reclamation Fund shall not be used for normal operating expenses of the agency.

(C) A bond deemed acceptable in Arkansas shall be a bond issued by a fidelity or surety company authorized to do business in Arkansas, a personal bond secured by such collateral as the director deems satisfactory, a cash bond, or a letter of credit.

(D)(i) All state, local, or other governmental agencies or subdivisions shall be exempt from the requirements of this subdivision (10).

(ii) The director may exempt classes of licensees from the requirements of this section when a finding is made that the exemption will not result in a significant risk to the public health and safety; and (11)(A) Allow the director or his or her authorized representative to require a licensee to deposit funds on an annual, semiannual, or quarterly basis in a trust fund established for the exclusive purpose set out in this subdivision (11). The Perpetual Maintenance Fund shall be defined so as to embrace each of the following:

(i) A source of revenue to provide for perpetual care and surveillance of a radioactive waste concentration, storage, and disposal site as described in subdivision (9) of this section or a source of revenue to provide for perpetual care and surveillance of a formerly licensed activity still containing or having associated with it radioactive material, the activity having ceased to operate by reason of default, abandonment, or decommissioning;

(ii) The Perpetual Maintenance Fund shall have two (2) inputs:

(a) Fees which are contributed by the lessee or licensee resulting from the operation of concentrating, storing, or disposing of radioactive material as set forth in subdivision (9) of this section; and

(b) Moneys accrued as interest on a trust fund established by a licensee. These funds shall be automatically transferred to the Perpetual Maintenance Fund in the event of default, abandonment, or decommissioning;

(iii) Moneys in the Perpetual Maintenance Fund shall be appropriated to the agency for use in a way consonant with this subchapter, including such items as perpetual care, maintenance, and surveillance; and

(iv) All licensee contributions to the Perpetual Maintenance Fund shall be payable to the director and deposited by the Treasurer of State.

(B) To provide for the proper care and surveillance of licensed sites subject to subdivision (11)(A) of this section, the state shall have the right to acquire by gift, transfer, purchase, or condemnation from another government agency or private person any lands, buildings, and grounds necessary to fulfill the purposes of this section. Any gift, transfer, purchase, or condemnation shall be subsequently subject to be approved and accepted by the state.

(C) To effectuate the provisions of this subchapter, the agency, by lease or license with any person, may provide for the operation of a site. Any lessee or licensee operating under the provisions of this subdivision (11) shall be subject to subdivision (10) of this section.

(D)(i) The funds required by this subdivision (11) shall be established at such rate that interest on the sum of all funds reasonably

anticipated as payable shall provide an annual amount equal to the anticipated reasonable costs necessary to maintain, monitor, and otherwise supervise and care for the lands and facilities as required in the interest of public health and safety.

(ii) In arriving at the rate of funds to be deposited, the agency shall consider the nature of the licensed material, size and type of activity, estimated future receipts, and estimated future expenses of maintenance, monitoring, and supervision.

(E) Recognizing that ultimate responsibility to protect the public health and safety must be reposed in a solvent government, without regard to the existence of any particular agency or department thereof, all lands, buildings, and grounds acquired by the state under subdivision (11)(B) of this section shall be owned in fee simple absolute by the state for purposes stated in subdivision (11)(B) of this section. All radioactive material received at the site and located therein at time of acquisition of ownership by the state becomes the property of the state.

(F) If a person licensed by any governmental agency other than the State of Arkansas desires to transfer a site to the state for the purpose of administering or providing perpetual care, a lump-sum deposit shall be made to a trust fund. The amount of the deposit shall be determined by the director, taking into consideration the factors stated in subdivision (11)(D) of this section.

History. Acts 1961 (2nd Ex. Sess.), No. § 1; 1983, No. 19, §§ 4 [4A], 5; A.S.A. 8, § 4; 1969, No. 115, § 1; 1975, No. 382, 1947, § 82-1515.

20-21-208. State Radiation Control Agency — Powers and duties — Ionizing radiation.

(a) The State Radiation Control Agency may require registration or licensing of other sources of ionizing radiation.

(b) The agency may exempt certain sources of ionizing radiation or kinds of uses or users from the licensing or registration requirements set forth in this subchapter when the agency finds that the exemption of the sources of ionizing radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public or to the environment.

History. Acts 1961 (2nd Ex. Sess.), No. § 1; 1983, No. 19, §§ 4 [4A], 5; A.S.A. 8, § 4; 1969, No. 115, § 1; 1975, No. 382, 1947, § 82-1515.

20-21-209. State Radiation Control Agency — Recognition of other licenses.

Rules and regulations promulgated pursuant to this subchapter may provide for recognition of other state or federal licenses as the State Radiation Control Agency may deem desirable, subject to such registration as the agency may prescribe.

History. Acts 1961 (2nd Ex. Sess.), No. § 1; 1983, No. 19, §§ 4 [4A], 5; A.S.A. 8, § 4; 1969, No. 115, § 1; 1975, No. 382, 1947, § 82-1515.

20-21-210. State Radiation Control Agency — Application.

The provisions of §§ 20-21-206 — 20-21-211 shall not apply to any production or utilization facility for which the Nuclear Regulatory Commission or any successor agency thereto has issued a license which is in force and effect to construct or operate the facility.

History. Acts 1975, No. 382, § 2; A.S.A. 1947, § 82-1515.1.

20-21-211. State Radiation Control Agency — Construction.

Sections 20-21-206 — 20-21-210 are cumulative and are intended to supplement existing laws, and no part shall be construed to repeal any existing law specifically enacted for the protection of public health and safety.

History. Acts 1975, No. 382, § 4.

20-21-212. License or registration required.

It shall be unlawful for any person to use, manufacture, produce, distribute, sell, transport, transfer, install, repair, receive, acquire, own, or possess any source of ionizing radiation unless licensed by or registered with the State Radiation Control Agency in conformance with rules and regulations promulgated in accordance with this subchapter.

History. Acts 1961 (2nd Ex. Sess.), No. 8, § 12; 1983, No. 19, § 9; A.S.A. 1947, § 82-1523.

20-21-213. Licensing and registration requirements generally.

(a) The State Radiation Control Agency shall provide by rule or regulation for general or specific licensing of accelerator-produced material, by-product material, source material, special nuclear material, or devices or equipment utilizing such material.

(b) The rule or regulation shall provide for amendment, suspension, or revocation of licenses.

(c) The rule or regulation shall provide that:

(1) Each application for a specific license shall be in writing and shall state such information as the agency by rule or regulation may determine to be necessary to decide the technical, insurance, and financial qualifications or any other qualifications of the applicant as the agency may deem reasonable and necessary to protect the occupational and public health and safety;

(2) The agency may at any time after the filing of the application and before the expiration of the license require further written statements

and may make such inspections as the agency may deem necessary in order to determine whether the license should be granted or denied or whether the license should be modified, suspended, or revoked;

(3) All applications and statements shall be signed by the applicant or licensee;

(4) The agency may require any applications or statements to be made under oath or affirmation;

(5) Each license shall be in such form and contain such terms and conditions as the agency may by rule or regulation prescribe;

(6) No license issued under this subchapter and no right to possess or utilize sources of ionizing radiation granted by any license shall be assigned or in any manner disposed of;

(7) The terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules, regulations, or orders issued in accordance with this subchapter;

(8) Licenses issued by the agency shall:

(A) Be nontransferable;

(B) Be renewed every five (5) to ten (10) years based on risk factors as determined by the agency; and

(C) Expire at a time specified by the agency; and

(9) Registrations issued shall:

(A) Be nontransferable;

(B) Be renewed at a time specified by the agency; and

(C) Expire one (1) year after issuance or at a time specified by the agency.

History. Acts 1961 (2nd Ex. Sess.), No. 8, § 5; 1983, No. 19, § 6; A.S.A. 1947, § 82-1516; Acts 1995, No. 796, § 2; 2003, No. 1119, §§ 1-3.

Amendments. The 2003 amendment inserted “accelerator-produced material” in (a); and rewrote (c)(8) and (9).

20-21-214. Licensing and registration requirements — Sources of ionizing radiation.

(a) The State Radiation Control Agency shall require registration or licensing of other sources of ionizing radiation.

(b) The agency may exempt certain sources of ionizing radiation or kinds of uses or users from the licensing or registration requirements set forth in this section and § 20-21-213 when the agency makes a finding that the exemption of the sources of ionizing radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

History. Acts 1961 (2nd Ex. Sess.), No. 8, § 5; 1983, No. 19, § 6; A.S.A. 1947, § 82-1516.

20-21-215. Licensing and registration requirements — Recognition of other licenses.

Rules and regulations promulgated pursuant to this subchapter may provide for recognition of other state or federal licenses as the State Radiation Control Agency shall deem desirable, subject to such registration requirements as the agency may prescribe.

History. Acts 1961 (2nd Ex. Sess.), No. 8, § 5; 1983, No. 19, § 6; A.S.A. 1947, § 82-1516.

20-21-216. Licensing and registration requirements — Termination.

(a) Any radioactive materials license issued or renewed after July 4, 1983, for any activity which results in the production of radioactive material shall contain such terms and conditions as the State Radiation Control Agency determines to be necessary to assure that prior to termination of the license:

(1) The licensee will comply with decontamination, decommissioning, and reclamation standards prescribed by the agency, which shall be equivalent to or more stringent than those of the Nuclear Regulatory Commission or any successor thereto, for sites at which ores were processed primarily for their source material content and at which the radioactive material is deposited;

(2) Ownership of any disposal site and the radioactive material which resulted from the licensed activity shall be transferred to either the United States or the state, if this state exercises the option to acquire land used for the disposal of the radioactive material; and

(3) Any license which is in effect on July 4, 1983, and which is subsequently terminated without renewal shall comply with subdivisions (a)(1) and (2) of this section upon termination.

(b) The agency shall require by rule, regulation, or order that, prior to the termination of any license which is issued after July 4, 1983, title to the land including any interests therein other than land held in trust by the United States for any Indian tribe or owned by an Indian tribe subject to a restriction against alienation imposed by the United States, or land already owned by the United States or by this state, which is used pursuant to the license for the disposal of radioactive material shall be transferred to either the United States or to the state, unless the Nuclear Regulatory Commission or any successor thereto determines prior to the termination that transfer of title to the land and the material is not necessary or desirable to protect the public health, safety, or welfare, or to minimize danger to life or property.

(c) If transfer to the state of title to the radioactive material and land is required, the agency, following the Nuclear Regulatory Commission's determination that the licensee has complied with applicable standards and requirements under his or her license, shall assume title to the material or land and maintain the material and land in such manner as will protect the public health and safety and the environment.

- (d) The agency may undertake such monitoring, maintenance, and emergency measures as are necessary to protect the public health and safety for those materials and property for which it has assumed custody pursuant to this subchapter.
- (e) The transfer of title to land or radioactive materials to the United States or to this state shall not relieve any licensee of liability for any fraudulent or negligent acts done prior to the transfer.
- (f) Other than administrative and legal costs incurred by the United States or by this state in carrying out the transfer, radioactive materials or land transferred to the United States or to the state in accordance with this section shall be transferred without cost.

History. Acts 1961 (2nd Ex. Sess.), No. 8, § 5; 1983, No. 19, § 6; A.S.A. 1947, § 82-1516.

20-21-217. Licensing and registration requirements — Compliance with standards — Fees.

- (a) In licensing and regulation of radioactive material or of any activity which results in the production of radioactive materials so defined, the State Radiation Control Agency shall require compliance with applicable standards promulgated by the agency which are equivalent to or more stringent than standards adopted and enforced by the Nuclear Regulatory Commission for the same purpose, including requirements and standards promulgated by the Environmental Protection Agency.
- (b) The agency may charge and collect the following annual fees associated with licensing and registration of sources of ionizing radiation:
- (1) Hospitals or medical centers:
 - (A) Category I-A \$900.00
 - (B) Category I-B 700.00
 - (C) Category II-A 650.00
 - (D) Category II-B 450.00
 - (E) Category III 200.00
 - (2) X-ray registrations:
 - (A) All X-ray units, \$65.00 per tube up to a maximum of \$260.00
 - (B) Vendor services providing radiation equipment services or radiation safety services, or both 65.00
 - (3) Radioactive material licenses:
 - (A) Private practice, other than teletherapy units or particle accelerators \$100.00
 - (B) Radiography:
 - (i) In plant 350.00 for first bay
..... 500.00 for two (2) or more bays
 - (ii) Field 1,000.00
 - (C) Wireline service operation 300.00 for 1 to 3 sources
..... 500.00 for 4 or more sources

(D) Academic:

(i) Broad 500.00

(ii) Other 200.00

(E) Gas chromatograph devices and lead analyzers 100.00

(F) Nuclear gauges 300.00 for 1 to 5 gauges

..... 500.00 for 6 or more gauges

(G) Particle accelerators, nonmedical 200.00

(H) In vitro laboratory testing 25.00

(I) Irradiators 1,000.00

(J) Nuclear pharmacy 1,000.00

(K) Mobile nuclear medicine service 1,200.00

(L) Consultants 250.00

(4) General licensed devices: Initial registration and annual fees for the receipt, possession, or use of radioactive material under a general license or a license obtained through reciprocity, as defined by the agency, shall be as follows:

(A) Certain measuring, gauging, and controlling devices . \$300.00

(B) Generally licensed gas chromatographs 200.00

(C) Static elimination devices 100.00

(D) Source material devices 500.00

(E) Devices containing depleted uranium 500.00

(F) Public safety devices containing radioactive material . . 50.00

(G) All other general license registrations other than those specified above 150.00

(5) Other:

(A) Medical, therapy, nonhospital unit \$250.00 for first unit

..... 175.00 for each additional unit

(B) Particle accelerator medical, nonhospital unit

..... 450.00 for first unit

..... 300.00 for each additional unit

(C) "Arkansas State Board of Health Rules and Regulations for Control of Sources of Ionizing Radiation" 0.00 for first copy

..... 30.00 for each additional copy

(D) Naturally occurring radioactive material license 2,500.00

(E) Amendment to existing license 50.00 per amendment

(6) Reciprocity:

(A) Naturally occurring radioactive material \$2,500.00

(B) Radiography, field 1,000.00

(C) Wireline 500.00

(D) Nuclear gauge 500.00

(E) Consultant 100.00

(7) Late fees: A late fee equal to ten percent (10%) of the applicable fee shall be charged for fees not received within sixty (60) days of the invoiced due date and for every sixty (60) days thereafter.

(c) Each application for reciprocal recognition of an out-of-state license or of an out-of-state registration shall be accompanied by the applicable annual fee, provided that no fee has been submitted during the calendar year of the application.

(d)(1) The annual fee shall be based upon the calendar year, January 1 through December 31, with fees for any given year due by December 31 of the previous year.

(2) Applications for new licenses or registrations shall be accompanied by the appropriate fees. The applicants shall be charged for a full calendar year regardless of the month the license or registration is issued.

(3) Applications for amendments to licenses or registration certificates which result in a change to a more costly category shall be accompanied by a fee equal to the difference between the fee for the current category and the one to which the amended license or certificate will escalate.

(4) Fee payments shall be by check, draft, or money order made payable to the Division of Health of the Department of Health and Human Services.

(5) In any case in which the agency finds that an applicant for a new license or new certificate of registration has failed to pay the fee prescribed in this section, the agency shall not process that application until the fee is paid.

(6) In any case in which the agency finds that a person has failed to pay a fee prescribed by this section within ninety (90) days of the date due, the agency may issue an order to show cause why that registration, license, or other service should not be revoked, suspended, or terminated, as appropriate.

(e) No annual fees shall be required for those applicants, licensees, registrants, or other applicable persons whose use of sources of radiation is certified as financed solely by the General Revenue Fund of the State of Arkansas.

(f) All fees levied and collected under this section are declared to be special revenues and shall be deposited into the State Treasury, there to be credited to the Public Health Fund.

(g) Subject to the rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the division may transfer all unexpended funds relative to licensing and registration for use of radioactive materials and X-ray equipment that pertain to fees collected, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

History. Acts 1961 (2nd Ex. Sess.), No. 8, § 5; 1983, No. 19, § 6; A.S.A. 1947, § 82-1516; Acts 1987, No. 504, § 2; 1995, No. 796, § 3; 2003, No. 1119, §§ 4-6; 2005, No. 929, § 1.

Amendments. The 2003 amendment, in (a), substituted “§ 20-21-217” for “§ 20-21-203(19)” and made a stylistic change; deleted “Co-57” preceding “lead analyzers” in (b)(3)(E); inserted present (b)(4) and

redesignated the remaining subdivisions in (b) accordingly; rewrote present (b)(5)(E); deleted (b)(5)(F); added “and for every sixty (60) days thereafter” in present (b)(7); and inserted “solely” in (e).

The 2005 amendment substituted “may charge” for “is hereby authorized to charge” in (b); rewrote (b)(2)(A) and (b)(2)(B); deleted former (b)(2)(C)-(H); inserted “or a license obtained through rec-

iprocity" in (b)(4); and substituted "Public safety devices containing radioactive material" for "Barium devices" in (b)(4)(F).

20-21-218. Records.

(a)(1) The State Radiation Control Agency shall require each person who manufactures, possesses, distributes, sells, installs, repairs, or uses a source of ionizing radiation to maintain records relating to its receipt, storage, transfer, or disposal and such other records as the agency may require subject to such exemptions as may be provided by rules and regulations.

(2) The agency shall require each person who manufactures, possesses, distributes, sells, installs, repairs, or uses a source of ionizing radiation, or who furnishes personnel dosimetry services for agency licensees or registrants to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is required by rules and regulations of the agency.

(b)(1) Copies of all records required by subsection (a) of this section shall be submitted to the agency upon request. The agency shall obtain these required records from each person who manufactures, possesses, distributes, sells, installs, repairs, or uses a source of ionizing radiation and from service personnel.

(2) Any person possessing or using a source of ionizing radiation shall furnish to each employee for whom personnel monitoring is required a copy of the employee's personal exposure record, as follows:

- (A) Annually;
- (B) At any time the employee has received excessive exposure; and
- (C) Upon termination of employment.

History. Acts 1961 (2nd Ex. Sess.), No. 8, § 7; 1983, No. 19, § 7; 1985, No. 554, § 1; A.S.A. 1947, § 82-1518.

20-21-219. Storage of radioactive wastes.

(a) The operation or administration of any sites acquired under this subchapter for the concentration and storage of radioactive wastes and byproducts shall be under the direct supervision of the State Radiation Control Agency and shall be in accordance with the regulations promulgated and enforced by that agency to protect the public health and safety.

(b) The agency may lease or license such lands, buildings, and grounds as it may acquire under this subchapter for the purpose of operating sites for the concentration and storage of radioactive wastes and by-products.

(c) The State Board of Health may enter into contracts as may be necessary for carrying out the provisions of this subchapter.

(d)(1) To finance the custody, control, and maintenance of such sites as the agency may undertake, the agency may collect fees from private or public parties holding radioactive material for custodial purposes.

The fees shall be sufficient in each individual case to defray the estimated cost of the agency's custodial management activities for that individual case.

(2) All fees shall be placed in a special account, in the nature of a revolving trust fund and which may be designated the "Perpetual Maintenance Fund".

(3) The fees shall be received, disbursed, and accounted for by using generally accepted accounting principles.

(4) Moneys in the fund may be invested in United States bonds and treasury bills or in such other securities as may be approved by the agency and the Treasurer of State.

History. Acts 1961 (2nd Ex. Sess.), No. 115, § 2; A.S.A. 1947, §§ 82-1526, 82-8, §§ 17, 18, as added by Acts 1969, No. 1527.

20-21-220. Training programs.

The State Radiation Control Agency may institute training programs for the purpose of qualifying personnel to carry out the provisions of this subchapter and may make the personnel available for participation in any program or programs of the federal government, other states, or interstate agencies in furtherance of the purposes of this subchapter.

History. Acts 1961 (2nd Ex. Sess.), No. 8, § 9; A.S.A. 1947, § 82-1520.

20-21-221. Intergovernmental agreements.

(a)(1) The Governor, on behalf of this state, may enter into agreements with the federal government providing for discontinuance of certain of the federal government's responsibilities with respect to sources of ionizing radiation and the assumption thereof by this state pursuant to this subchapter.

(2) Any person that, on the effective date of an agreement under this subsection, possesses a license issued by the federal government shall be deemed to possess the same pursuant to a license issued under this subchapter, which shall expire either ninety (90) days after receipt from the State Radiation Control Agency of a notice of expiration of the license or on the date of expiration specified in the federal license, whichever is earlier.

(b) The agency may enter into an agreement or agreements with the federal government, other states, or interstate agencies, whereby this state will perform, on a cooperative basis with the federal government, other states, or interstate agencies, inspections or other functions relating to control of sources of ionizing radiation.

History. Acts 1961 (2nd Ex. Sess.), No. 8, §§ 8, 9; A.S.A. 1947, §§ 82-1519, 82-1520.

20-21-222. Administrative proceedings.

(a) Under this subchapter:

(1) In any proceeding for the issuance or modification of rules or regulations relating to control of sources of ionizing radiation, the State Radiation Control Agency shall provide an opportunity for public participation through written comments or a public hearing, or both;

(2) In any proceeding for the denial of an application for a license or for revocation, suspension, or modification of a license, the agency shall provide to the applicant or licensee an opportunity for a hearing on the record;

(3) In any proceeding for licensing ores processed primarily for their source material content or disposal of radioactive material or for licensing commercial burial of radioactive wastes, the agency shall provide:

(A) An opportunity, after public notice, for written comments and a public hearing with a transcript;

(B) An opportunity for cross examination; and

(C) A written determination of the action to be taken which is based upon findings included in the determination and upon evidence presented during the public comment period;

(4) In any proceeding for licensing ores processed primarily for their source material content, for disposal of radioactive material, or for licensing commercial burial of radioactive wastes, the agency shall prepare a written analysis of the impact of the activity on the environment for each licensed activity which has a significant impact on the human environment. The analysis shall be available to the public before the commencement of hearings held pursuant to subdivision (a)(3) of this section and shall include:

(A) An assessment of the radiological and nonradiological impacts to the public health;

(B) An assessment of any impact on any waterway and groundwater;

(C) Consideration of alternatives, including alternative sites and engineering methods, to the activities to be conducted; and

(D) Consideration of the long-term impacts including decommissioning, decontamination, and reclamation of facilities and sites associated with the licensed activities and management of any radioactive materials which will remain on the site after the decommissioning, decontamination, or reclamation; and

(5) The agency shall prohibit any major construction with respect to any activity for which an environmental impact analysis is required by subdivision (a)(4) of this section prior to completion of such an analysis.

(b)(1) Whenever the agency finds that an emergency exists requiring immediate action to protect the public health and safety, the agency may without notice or hearing issue a regulation or order reciting the existence of the emergency and requiring that the action be taken as is necessary to meet the emergency.

(2) Notwithstanding any provision of this subchapter, the regulations or order shall be effective immediately.

(3) Any person to whom the regulation or order is directed shall comply with the regulation or order immediately but, on application to the agency, shall be afforded a hearing within ten (10) days.

(4) On the basis of the hearing, the emergency regulation or order shall be continued, modified, or revoked within thirty (30) days after the hearing.

(c) Any final order entered in any proceeding under this section may be appealed to the Pulaski County Circuit Court within twenty (20) days from the date of issuance of the order.

History. Acts 1961 (2nd Ex. Sess.), No. 8, § 10; 1983, No. 19, § 8; A.S.A. 1947, § 82-1521.

SUBCHAPTER 3 — ELECTRONIC PRODUCTS

SECTION.

- 20-21-301. Declaration of policy.
- 20-21-302. Purpose.
- 20-21-303. Definitions.
- 20-21-304. Penalties.
- 20-21-305. Enforcement.
- 20-21-306. State Electronic Product Control Agency.
- 20-21-307. License or registration required.

SECTION.

- 20-21-308. Licensing and registration — Regulation by State Electronic Product Control Agency.
- 20-21-309. Records.
- 20-21-310. Training programs.
- 20-21-311. Intergovernmental agreements.
- 20-21-312. Administrative proceedings.

20-21-301. Declaration of policy.

It is the policy of the State of Arkansas in furtherance of its responsibility to protect the public health and safety and to institute and maintain a regulatory program for the control of radiation from electronic products in order to provide for compatibility with standards and regulatory programs of the federal government an effective system of regulation within this state and a system consonant insofar as possible with those of other states.

History. Acts 1969, No. 460, § 1; A.S.A. 1947, § 82-1528.

20-21-302. Purpose.

It is the purpose of this subchapter to effectuate the policies set forth in § 20-21-301 by providing for:

- (1) A program of effective regulation of radiation emitted from electronic products or components of electronic products for the protection of the occupational and public health and safety;
- (2) A program to promote an orderly regulatory pattern within this state, among the states, and between the federal government and this state and to facilitate intergovernmental cooperation; and

(3) A program to establish procedures for assumption and performance of certain regulatory responsibilities with respect to the manufacture, distribution, installation, repair, or use of electronic products.

History. Acts 1969, No. 460, § 2;
A.S.A. 1947, § 82-1529.

20-21-303. Definitions.

As used in this subchapter:

(1) "Electronic products" means any manufactured product or device or component part of that product or device which during the operation can generate or emit a physical field of radiation;

(2) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, other than agencies of the United States Government or any successor thereto; and

(3) "Radiation" means any electromagnetic or ionizing radiation which can be generated during the operation of electronic products.

History. Acts 1969, No. 460, § 3; 1971,
No. 722, § 1; A.S.A. 1947, § 82-1530.

20-21-304. Penalties.

(a) Any person who willfully violates any of the provisions of this subchapter or rules, regulations, or orders in effect pursuant to this subchapter of the agency shall upon conviction be punished by a fine of not less than one hundred dollars (\$100) nor more than two thousand dollars (\$2,000) or by imprisonment for not more than six (6) months, or by both fine and imprisonment.

(b) Each day of violation shall be considered a separate offense and shall be punishable as such.

History. Acts 1969, No. 460, § 13;
A.S.A. 1947, § 82-1540.

20-21-305. Enforcement.

(a) The State Radiation Control Agency or its authorized representatives shall have the power to enter at all reasonable times upon any private or public property on or in which electronic products are being manufactured, distributed, used, or repaired for the purpose of determining whether or not there is compliance with or violation of this subchapter and rules and regulations issued under this subchapter. However, entry into areas under the jurisdiction of the federal government shall be effected only with the concurrence of the federal government or its designated representative.

(b) In the event of an emergency, the agency shall have the authority to impound or order the impounding of electronic products in the possession of any person who is not equipped to observe or fails to observe the provisions of this subchapter or any rules or regulations issued under this subchapter.

(c) Whenever in the judgment of the agency any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this subchapter or any rule, regulation, or order issued under this subchapter, then at the request of the agency, the Attorney General may make application to a court of competent jurisdiction for an order enjoining those acts or practices, or for an order directing compliance and, upon a showing by the agency that the person has engaged in or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

History. Acts 1969, No. 460, §§ 6, 10, 12; A.S.A. 1947, §§ 82-1533, 82-1537, 82-1539.

20-21-306. State Electronic Product Control Agency.

(a) The State Board of Health is designated as the State Electronic Product Control Agency.

(b) The Director of the Division of Health of the Department of Health and Human Services shall be director of the agency who shall perform the functions vested in the agency pursuant to this subchapter.

(c) In accordance with the laws of the State of Arkansas, the agency may employ, compensate, and prescribe the powers and duties of such individuals as may be necessary to carry out this subchapter.

(d) For the protection of the occupational and public health and safety, the agency shall:

(1) Develop such programs as the agency determines are necessary for the evaluation and control of radiation hazards associated with the use of electronic products;

(2) Develop programs and formulate, adopt, promulgate, and repeal codes, rules, and regulations with due regard for compatibility with federal programs for licensing and regulation of certain electronic products and radiation therefrom;

(3) Issue such orders, or modifications thereof, and conduct such hearing proceedings as may be necessary under this subchapter;

(4) Advise, consult, and cooperate with other governmental agencies and with other groups concerned with the control of radiation from electronic products;

(5) Have the authority to accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the federal government or from other sources, public or private;

(6) Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to control of radiation from electronic products; and

(7) Collect and disseminate information relating to its functions, including:

(A) Maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations;

(B) Maintenance of a file of registrants requiring registration under this subchapter and any administrative or judicial action pertaining to this subchapter; and

(C) Maintenance of a file of all rules and regulations relating to regulation of radiation from electronic products, pending or promulgated, and proceedings thereon.

History. Acts 1969, No. 460, § 4;
A.S.A. 1947, § 82-1531.

20-21-307. License or registration required.

It shall be unlawful for any person to use, manufacture, distribute, install, repair, acquire, own, or possess an electronic product except in conformance with regulations for licensing or registration for that product, if any, promulgated in accordance with this subchapter.

History. Acts 1969, No. 460, § 11;
A.S.A. 1947, § 82-1538.

20-21-308. Licensing and registration — Regulation by State Electronic Product Control Agency.

(a) The State Electronic Product Control Agency may:

(1) Require registration or licensing for the manufacture, distribution, installation, repair, and use of electronic products or component parts of such products and for which regulations have been promulgated as specified in § 20-21-306(d)(2);

(2) Exempt certain electronic products from the licensing or registration requirements set forth in this section when the agency makes a determination that the exemption of the electronic products or kinds of uses or users of the products will not constitute a significant risk to the health and safety of the public.

(b) Rules and regulations promulgated pursuant to this subchapter may provide for recognition of other state or federal licenses as the agency may deem desirable, subject to such registration requirements as the agency may prescribe.

History. Acts 1969, No. 460, § 5;
A.S.A. 1947, § 82-1532.

20-21-309. Records.

(a) Each person who manufactures, distributes, installs, repairs, or uses electronic products shall establish and maintain such records, make such reports, and provide such information as the State Electronic Product Control Agency may by rule or regulation reasonably require to enable the agency to determine the compliance of the person with this subchapter.

(b) Any report or information concerning trade secrets or secret industrial processes obtained under this subchapter shall not be disclosed or opened to public inspection except as may be necessary for the performance of the functions of the agency.

History. Acts 1969, No. 460, § 7;
A.S.A. 1947, § 82-1534.

20-21-310. Training programs.

The State Electronic Product Control Agency may institute training programs for the purpose of qualifying personnel to carry out the provisions of this subchapter and may make the personnel available for participation in any program or programs of the federal government, other states, or interstate agencies in furtherance of the purposes of this subchapter.

History. Acts 1969, No. 460, § 8;
A.S.A. 1947, § 82-1535.

20-21-311. Intergovernmental agreements.

The State Electronic Product Control Agency may enter into agreements or contracts with the federal government, other states, or interstate agencies whereby this state will perform inspections or other functions relating to the control of radiation from electronic products on a cooperative basis with the federal government, other states, or interstate agencies.

History. Acts 1969, No. 460, § 8;
A.S.A. 1947, § 82-1535.

20-21-312. Administrative proceedings.

(a) In any of the proceedings under this subchapter, the State Electronic Product Control Agency shall afford an opportunity for a hearing on the record upon the request of any person whose interest may be affected by the proceeding and shall admit the person as a party to the proceeding:

(1) For the issuance or modification of rules and regulations relating to radiation from electronic products;

(2) For granting, suspending, revoking, or amending any license; or

(3) For determining compliance with or granting exceptions from rules and regulations of the agency.

(b)(1) Whenever the agency finds that an emergency exists requiring immediate action to protect the public health and safety, the agency, without notice or hearing, may issue a regulation or order reciting the existence of an emergency and requiring that such action be taken as is necessary to meet the emergency.

(2) Notwithstanding any provision of this subchapter, the regulation or order shall be effective immediately.

(3) Any person to whom the regulation or order is directed shall comply with the regulation or order immediately but, on application to the agency within ten (10) days, shall be afforded a hearing within thirty (30) days.

(4) On the basis of the hearing, the emergency regulation or order shall be continued, modified, or revoked within thirty (30) days after the hearing.

(c) Any final order entered in any proceeding under this section may be appealed to the Pulaski County Circuit Court within twenty (20) days from the date of receipt of the order.

History. Acts 1969, No. 460, § 9; A.S.A. 1947, § 82-1536.

SUBCHAPTER 4 — NUCLEAR PLANNING AND RESPONSE PROGRAM

SECTION.

20-21-401. Legislative intent.

20-21-402. Administration by the Division of Health of the Department of Health and Human Services.

SECTION.

20-21-403. Operating funds.

20-21-404. Fees.

20-21-405. Arkansas Nuclear Planning and Response Fund.

Effective Dates. Acts 1980 (1st Ex. Sess.), No. 67, § 8: Feb. 6, 1980. Emergency clause provided: "It is hereby found and determined by the General Assembly that the operation of nuclear generating facilities in this State presents possible serious health and ecological consequences; that it is essential to the protection of the public peace, health and safety of the citizens of this State that the proper planning and procedures be established to deal with radiological accidents or incidents at nuclear generating facilities; that this Act is designed to accomplish this purpose and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 101, § 3: Feb. 18, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law relating to the Arkansas Nuclear Planning and Response Program divides responsibility for carrying out the program among three state agencies; that this division of responsibility makes administration of the program difficult and decreases the efficiency and effectiveness of the program; that this Act is designed to charge the Health Department with full responsibility for administering the program and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

20-21-401. Legislative intent.

(a) It is found and determined by the General Assembly that the operation of nuclear generating facilities in this state raises the possibility of adverse health and ecological effects which could result from radiological incidents or accidents at those facilities and that it is essential to the health and welfare of the citizens of this state and particularly those in close proximity to the facilities that a program be initiated to provide for continuous environmental surveillance in the area of nuclear generating facilities and to initiate and formulate plans and procedures for immediate emergency response capability in the event of an accident or incident which might endanger the lives or property of persons.

(b) The General Assembly further determines that it is appropriate that the utility operating the facilities bear the cost associated with preparing and implementing plans to deal with the effects of nuclear accidents or incidents.

(c) Therefore, it is the purpose and intent of this subchapter to initiate a program to deal with this matter and to charge the Division of Health of the Department of Health and Human Services with the responsibility of carrying out the program and to provide for funding the program through fees or assessments against utilities operating nuclear generating facilities.

History. Acts 1980 (1st Ex. Sess.), No. 67, § 1; 1981, No. 101, § 1; A.S.A. 1947, § 82-1541.

20-21-402. Administration by the Division of Health of the Department of Health and Human Services.

(a) The Division of Health of the Department of Health and Human Services shall carry out a Nuclear Planning and Response Program designed to protect the lives and property of persons of this state from radiation hazards and other hazards which may result from the establishment and operation of nuclear electrical generating facilities in this state.

(b) The program shall include:

(1) Continuous environmental radiation surveillance in the area of any nuclear generating facility;

(2) The training and education of persons residing in the areas regarding nuclear hazards and protective measures to be taken in the event of a radiological incident or accident;

(3) A plan for immediate emergency response capability in the event of an incident or accident at the facility;

(4) The dissemination of information to the public pertaining to radiation hazards;

(5) Protective measures, evacuation procedures, and other appropriate actions to be taken in the event of a radiation incident or accident; and

(6) Such other matters as the division shall determine to be necessary or appropriate to educate, inform, and equip citizens of this state to deal with any incident or accident at or resulting from the operation of nuclear generating facilities.

(c) To carry out the responsibilities provided for in this subchapter, the division may employ such personnel as is deemed necessary to the extent that funds are appropriated therefor by the General Assembly.

History. Acts 1980 (1st Ex. Sess.), No. 67, § 2; 1981, No. 101, § 2; A.S.A. 1947, § 82-1542.

Cross References. Study by departments of state government of nuclear material problems, §§ 15-10-304, 15-10-305.

20-21-403. Operating funds.

(a)(1) The Chief Fiscal Officer of the State shall annually determine the approximate amount of funds which will be necessary for the operation and maintenance of the Nuclear Planning and Response Program. This amount shall not be in excess of the total amounts appropriated for the program by the General Assembly for the particular year.

(2) The Director of the Division of Health of the Department of Health and Human Services shall certify the amount to each utility in the state which maintains and operates one (1) or more nuclear generating facilities in the state. The Chief Fiscal Officer of the State shall then notify each utility of the portion of the amount to be paid by each utility.

(b) The cost of maintaining and operating the program shall be apportioned to the utilities in this state operating nuclear generating facilities in such proportions as the Chief Fiscal Officer of the State shall determine to be most appropriate and equitable.

History. Acts 1980 (1st Ex. Sess.), No. 67, § 3; A.S.A. 1947, § 82-1543.

20-21-404. Fees.

(a) There is levied and there shall be collected annually from each utility in this state which operates one (1) or more nuclear generating facilities a fee in such amount as shall be determined by the Chief Fiscal Officer of the State in the manner prescribed in this subchapter.

(b) The fees so levied against each utility shall be remitted by the utility to the Director of the Division of Health of the Department of Health and Human Services within thirty (30) days after the amount thereof is certified by the Chief Fiscal Officer of the State.

(c) If any utility shall fail or refuse to pay the fees as provided in this section within the time prescribed, the director shall add to the fee a penalty of twenty-five percent (25%) thereof and shall certify the amount of the delinquent fee and penalty to the Attorney General for collection.

History. Acts 1980 (1st Ex. Sess.), No. 67, § 4; A.S.A. 1947, § 82-1544.

20-21-405. Arkansas Nuclear Planning and Response Fund.

All funds collected by the Chief Fiscal Officer of the State pursuant to this subchapter shall be deposited in the State Treasury as special revenues, and the full amount thereof shall be credited to the Arkansas Nuclear Planning and Response Fund. The fund shall be used exclusively for the operation and maintenance of the Nuclear Planning and Response Program.

History. Acts 1980 (1st Ex. Sess.), No. 67, § 5; A.S.A. 1947, § 82-1545.

SUBCHAPTER 5 — NUCLEAR PLANNING AND RESPONSE GRANTS

SECTION.

20-21-501. Definitions.

20-21-502. Administration.

20-21-503. Cooperative agreements.

SECTION.

20-21-504. Disbursal of funds.

20-21-505. Reporting requirements.

Effective Dates. Acts 1983, No. 536, § 6: Mar. 18, 1983. Emergency clause provided: "It is hereby found and determined by the Seventy-Fourth General Assembly that the establishment and maintenance of Radiological Response Plans by local governments in this State, which are located in close proximity to nuclear electricity generating facilities, have placed a financial burden on said local govern-

ments in excess of their normal operating revenues and that the establishment of a method of financial assistance is essential to the maintenance of their Radiological Response Plans. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

20-21-501. Definitions.

As used in this subchapter:

(1) "Chief executive officer" means the county judge of each county in this state;

(2) "Cooperative agreement" means the written instrument which sets forth the conditions to be met by each county in order to qualify for grant funds authorized by this subchapter;

(3) "Division of Health" means the Nuclear Planning and Response Program Office of the Division of Radiation Control and Emergency Management of the Division of Health of the Department of Health and Human Services, with the Director of the Division of Health of the Department of Health and Human Services having the ultimate authority over any activities conducted by that office and divisions;

(4) "Failure to perform" means:

(A) Utilization of grant funds which is inconsistent with the terms of the cooperative agreement;

(B) Failure to demonstrate the capability to carry out the minimum responsibilities as defined in the cooperative agreement;

(C) Failure to adhere to the conditions or requirements of the cooperative agreement;

(5) "Local government" means the cities, towns, municipalities, or other political subdivisions, or agencies thereof, located within a county in this state; and

(6) "Radiological response plan" means the specific operational procedures to be performed by the citizens of each county in the event of either an actual or practice nuclear emergency.

History. Acts 1983, No. 536, § 1;
A.S.A. 1947, § 82-1546.

20-21-502. Administration.

(a) The Division of Health of the Department of Health and Human Services shall serve as the administering and disbursing agency for a program of issuing grants to those local governments located in such close proximity to nuclear-powered electricity generating facilities in this state that federal or state regulations require those local governments to maintain nuclear disaster response procedures and precautions.

(b) Grants shall be issued by the division to the county governments in the affected areas, and the chief executive officer of each county shall be the agent of the county in entering into any agreements with the division in order to receive funds. He or she shall also be the agent of the county in entering into agreements with officials of the local governments or their agencies within each county to disburse the funds.

History. Acts 1983, No. 536, § 2;
A.S.A. 1947, § 82-1547.

20-21-503. Cooperative agreements.

(a)(1) Prior to the award of a grant to a county for the purposes described in this subchapter, the Division of Health of the Department of Health and Human Services shall draw up a proposal for a cooperative agreement between the State of Arkansas and the eligible counties in this state.

(2) The proposal shall set forth the activities to be conducted by the county under its radiological response plan as a prerequisite for receipt of grant payments.

(3) The proposed cooperative agreement shall include:

(A) The responsibilities of the county as prescribed in the county's radiological response plan and the State Emergency Operations Plan, as amended;

(B) The means by which the county will demonstrate that it can meet its designated responsibilities, as defined in subdivision

(a)(3)(A) of this section, including, but not limited to, program audits, test exercises, or operational readiness evaluations;

(C) The methods of distribution of grant funds to local governments and their agencies to provide a fair opportunity for all political subdivisions within the county to benefit from grant funds;

(D) The intended use of grant funds as reflected in an annual budget to correspond with the state fiscal year;

(E) Any other information determined by the Division of Health to be necessary to ensure compliance with state or federal regulations and to ensure that all expenditures of grant funds are in direct support of radiological emergency planning or response.

(b)(1) The Division of Health shall submit a proposal for a cooperative agreement to the chief executive officer of each county sixty (60) days prior to the beginning of the state fiscal year.

(2) The fully executed cooperative agreement shall be in effect by August 1 of the state fiscal year.

(3) A cooperative agreement is fully executed when it is duly signed by the Director of the Division of Radiation Control and Emergency Management of the Division of Health of the Department of Health and Human Services, as the representative of the Division of Health, and the county judge as the chief executive officer of the county.

(c) Variances from any portion of the cooperative agreement shall be approved, in writing, by the director, prior to implementation of the variance.

(d)(1) Failure to perform shall result in either suspension of funds for a specified period or complete revocation of the agreement. The specific penalty shall be determined following an assessment of the degree of seriousness imposed by the breach of agreement.

(2) The reinstatement of eligibility for a county so penalized shall occur only after satisfactory demonstration that the conditions or situations resulting in the penalty have been corrected.

(3) Written notice shall be given to the chief executive officer by the director citing the reason for the penalty and the steps necessary to regain agreement eligibility.

History. Acts 1983, No. 536, § 3;
A.S.A. 1947, § 82-1548.

20-21-504. Disbursal of funds.

In disbursing funds to eligible counties which have satisfactorily fulfilled the requirements of the cooperative agreement as set out in § 20-21-503, the Division of Health of the Department of Health and Human Services shall remit a maximum of ten thousand dollars (\$10,000) to each of the eligible counties to be payable during the second month of each quarter of the state fiscal year, which months are August, November, February, and May. The payments shall be made in equal quarterly installments of not to exceed two thousand five hundred dollars (\$2,500).

History. Acts 1983, No. 536, § 4;
A.S.A. 1947, § 82-1549.

20-21-505. Reporting requirements.

The chief executive officer of the county shall be responsible for submitting the following progress reports:

(1) **QUARTERLY FISCAL REPORT.** Within thirty (30) days following the end of each fiscal quarter, a report detailing the expenditure of grant moneys shall be submitted to the Nuclear Planning and Response Program Office of the Division of Radiation Control and Emergency Management of the Division of Health of the Department of Health and Human Services. The next quarter's funds shall not be authorized until receipt of the report covering the preceding quarter.

(2) **YEAR-END PROGRAM REPORT.** Within thirty (30) days of the completion of the state fiscal year, a report shall be submitted to the office containing the fourth quarter fiscal report and a narrative report on the status of the county's ability to implement its radiological response plan.

History. Acts 1983, No. 536, § 5;
A.S.A. 1947, § 82-1550.

SUBCHAPTER 6 — NUCLEAR PLANNING AND RESPONSE PROGRAM ADVISORY COMMITTEE

SECTION.

20-21-601. Public policy.

20-21-602. Purpose.

SECTION.

20-21-603. Creation.

Effective Dates. Acts 1997, No. 250, § 258; Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared

to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

20-21-601. Public policy.

It is the policy of the State of Arkansas to provide a coordinated effort to enhance the capability of the individual state and local agencies to carry out their statutory response requirements in the event of a

nuclear power plant accident at Arkansas Nuclear One, Units One and Two.

History. Acts 1983, No. 544, § 1;
A.S.A. 1947, § 82-1551.

20-21-602. Purpose.

It is the purpose of this subchapter to establish a Nuclear Planning and Response Program Advisory Committee which will serve as a coordination point for state and utility officials and whose meetings will provide a place whereby the public may discuss with their elected public officials, state officials, and the utility matters of concern pertaining to their safety and emotional wellbeing as they relate to the generation of electricity from Arkansas Nuclear One, Units One and Two.

History. Acts 1983, No. 544, § 2;
A.S.A. 1947, § 82-1552.

20-21-603. Creation.

(a)(1) The Nuclear Planning and Response Program Advisory Committee shall be established and shall be composed of the following elected officials:

- (A) The county judge of Conway County, Arkansas;
- (B) The county judge of Johnson County, Arkansas;
- (C) The county judge of Logan County, Arkansas;
- (D) The county judge of Pope County, Arkansas;
- (E) The county judge of Yell County, Arkansas;
- (F) The mayor of Atkins, Arkansas;
- (G) The mayor of Clarksville, Arkansas;
- (H) The mayor of Danville, Arkansas;
- (I) The mayor of Dardanelle, Arkansas;
- (J) The mayor of Dover, Arkansas;
- (K) The mayor of Knoxville, Arkansas;
- (L) The mayor of London, Arkansas;
- (M) The mayor of Morrilton, Arkansas;
- (N) The mayor of Paris, Arkansas; and
- (O) The mayor of Russellville, Arkansas.

(2) A committee member may designate a proxy, in writing, to serve in his or her absence.

(b) The committee shall:

(1) Be aware of the ongoing programs of the Nuclear Planning and Response Program Office as they relate to continuous environmental radiation surveillance, training, and education of persons residing in the ten-mile Emergency Planning Zone, immediate emergency response capability, dissemination of information to the public, and evacuation procedures;

(2) Advise on the applicability of any federal guidelines that may affect their respective towns and counties;

(3) Review and comment regarding the operations and coordination of required annual exercises as they relate to their off-site emergency capabilities to respond to a radiological incident at Arkansas Nuclear One, Units One and Two;

(4) Meet at least one (1) time in each fiscal year and at other times on the call of the Director of the State Radiation Control Agency or his or her designee. A written and timely notice of the time, place, and purpose of meetings shall be mailed by the agency to all committee members; and

(5) Conduct meetings in such a fashion that the local public has received adequate notice and that space is provided for attendance.

(c) Committee members may receive expense reimbursement from the Nuclear Planning and Response Fund in accordance with § 25-16-901 et seq.

History. Acts 1983, No. 544, § 3;
A.S.A. 1947, § 82-1553; Acts 1997, No. 250, § 192.

CHAPTER 22

FIRE PREVENTION, PROTECTION, AND SAFETY

SUBCHAPTER.

- 1. GENERAL PROVISIONS. [RESERVED.]
- 2. STATE FIRE PREVENTION COMMISSION.
- 3. OPEN-AIR FIRES.
- 4. LONG-TERM CARE FACILITIES.
- 5. MULTIPLE-OCCUPANCY FACILITIES.
- 6. FIRE EXTINGUISHERS.
- 7. FIREWORKS.
- 8. FIRE PROTECTION SERVICES.
- 9. VOLUNTEER FIRE DEPARTMENTS.
- 10. ARKANSAS COMPREHENSIVE FIRE PROTECTION ACT OF 1993.

Cross References. Fire marshal, § 12-13-105.

Fire training academy, § 12-13-201 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

SUBCHAPTER 2 — STATE FIRE PREVENTION COMMISSION

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| SECTION. | SECTION. |
| 20-22-201. Legislative declaration. | 20-22-204. Powers and duties. |
| 20-22-202. Creation — Members. | 20-22-205. Cooperation by other agencies. |
| 20-22-203. Staff, offices, and supplies provided. | 20-22-206. [Repealed.] |

Effective Dates. Acts 1979, No. 852, § 11: July 1, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that a significant part of the population of this State needs improved fire prevention in order to protect the health and safety of the citizens and their property; that establishment and maintenance of a coordinated program for fire prevention for the entire State is necessary to provide adequate protection to the citizens and residents of this State; and that enactment of this bill on July 1, 1979, will provide the citizens with a fire prevention system adequate to insure the well-being of the residents and citizens of this State and their property. Therefore, an emergency is declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall be in effect on and after July 1, 1979."

Acts 1983, No. 690, § 4: Mar. 31, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the duties now vested by law in the Department of Local Services are no longer required for the operation of State government, and that moneys now allocated to said Department are needed to support other essential services of government as identified herein, and that the immediate passage of this Act is necessary in order that the Department of Local Services may be abolished effective March

31, 1983, and the balance of funds accruing to the support of said Department may be transferred to other essential uses of government," as provided in this Act, for the remainder of the fiscal year ending June 30, 1983. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect on and after March 31, 1983."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

20-22-201. Legislative declaration.

The General Assembly finds and declares that:

- (1) A significant part of the population of this state needs improved fire prevention;
- (2) The establishment and maintenance of a coordinated program for fire prevention for the entire state is necessary to protect the safety and wellbeing of the citizens and residents of this state;
- (3) Adequate fire prevention is more likely to become a reality when certain provisions are enacted by law; and
- (4) Fire prevention is a public purpose and a responsibility of government for which public funds may be spent.

History. Acts 1979, No. 852, § 1; A.S.A. 1947, § 19-2165.

20-22-202. Creation — Members.

(a)(1) The State Fire Prevention Commission shall be composed of eleven (11) residents of the State of Arkansas.

(2) Membership of the commission shall consist of the following nonvoting members by virtue of their office:

(A) The State Fire Marshal;

(B) The Director of the Arkansas Fire Training Academy; and

(C) The Director of the Arkansas Forestry Department or his or her designee.

(3) The following voting members of the committee shall be appointed by the Governor:

(A) One (1) volunteer firefighter below the rank of chief;

(B) One (1) volunteer fire chief or chief officer of a voluntary municipal fire department;

(C) One (1) full-time fire chief or chief officer of a municipality having a population of more than sixty thousand (60,000) residents;

(D) One (1) full-time firefighter or fire department officer of a municipality having a population of less than sixty thousand (60,000) residents;

(E) Two (2) members at large active in fire protection or safety; and

(F) Two (2) persons representing the general public.

(b) Appointed members shall be appointed to three-year terms. All appointed members shall serve until their respective successors are appointed and qualify.

(c) Vacancies shall be filled by appointment by the Governor for the unexpired terms.

(d) The members of the commission shall serve without compensation but may receive expense reimbursement in accordance with § 25-16-901 et seq.

History. Acts 1979, No. 852, §§ 5, 6; 1983, No. 690, § 3; A.S.A. 1947, §§ 19-2169, 19-2170; Acts 1997, No. 250, § 193.

Publisher's Notes. The terms of the members of the State Fire Prevention

Commission are arranged so that three terms expire every third year and four terms expire in each of the two intervening years.

20-22-203. Staff, offices, and supplies provided.

The State Fire Marshal's Office shall provide staff, office space and supplies, and other assistance as may be necessary for the day-to-day operation of the State Fire Prevention Commission and its activities.

History. Acts 1979, No. 852, § 7; A.S.A. 1947, § 19-2171.

Publisher's Notes. Acts 1983, No. 690, § 1, transferred the responsibilities of the Department of Local Services (abol-

ished) to assist the Fire Prevention Commission and to administer the State Fire Prevention Commission Fund to the Department of Arkansas State Police, Fire Marshal's Office.

20-22-204. Powers and duties.

(a) The State Fire Prevention Commission may:

(1)(A) Obtain all necessary information from fire departments, police or sheriffs' departments, the Department of Arkansas State Police, other state agencies, clinics, insurance companies, or any other person with regard to fire, its causes, and its methods of prevention.

(B)(i) Notwithstanding any provision of law to the contrary, information furnished under this subsection shall be confidential and maintained as such if so requested by the persons providing the information; and

(ii) Nothing in this subsection shall prohibit the use of confidential information to prepare statistics or other general data when it is presented so as to prevent identification of the source of information; and

(2) Receive and expend funds obtained from the federal government or other sources by means of contracts, grants, awards, gifts, and other devices in support of fire prevention-related scientific and technical programs, studies, or other operations beneficial to the state.

(b) The commission shall have the following duties and responsibilities:

(1) Develop a plan for statewide fire prevention, including plans for urban and rural fire prevention;

(2) Develop and maintain a fire prevention database upon which decisions concerning fire prevention and policy may intelligently be made;

(3) Identify state needs relative to fire prevention, including specific needs of urban and rural areas;

(4) Recommend actions to meet identified state needs relative to fire prevention;

(5) Monitor and review the effectiveness of existing and proposed fire prevention programs;

(6) Maintain an awareness of fire prevention research and development of importance to the state in order to promote information exchange and coordination of efforts;

(7) Recommend legislative and executive action to encourage development of fire prevention resources and the efficient utilization of the resources;

(8) Administer a public fire prevention awareness program to inform the public of the importance and methods of fire prevention;

(9) Advise the General Assembly, the Governor, the State Fire Marshal, the Arkansas Forestry Commission, the Director of the Arkansas Fire Training Academy, the Director of the Department of Arkansas State Police, and the Insurance Commissioner on fire prevention and program matters of importance to each;

(10) Advise on the delegation of responsibilities to state agencies responsible for fire prevention and policy and recommend resolution of conflicts between the various agencies on fire prevention matters;

(11) Develop an annual report on the activities of the commission and transmit the report to the Governor and the General Assembly on or before November 30 annually; and

(12) Coordinate activities with the Federal Emergency Management Administration and any of the other federal or state agencies involved with fire prevention matters.

History. Acts 1979, No. 852, §§ 2, 3;
A.S.A. 1947, §§ 19-2166, 19-2167.

CASE NOTES

Cited: *Hamer v. Brown*, 641 F. Supp. 662 (W.D. Ark 1986).

20-22-205. Cooperation by other agencies.

All other state agencies shall cooperate and coordinate with the State Fire Prevention Commission to the utmost degree within the range of action permissible within statutory authority.

History. Acts 1979, No. 852, § 4;
A.S.A. 1947, § 19-2168.

20-22-206. [Repealed.]

Publisher's Notes. This section, concerning the State Fire Prevention Commission Fund, was repealed by Acts 1989,

No. 629, § 9. The section was derived from Acts 1979, No. 852, § 8; A.S.A. 1947, § 19-2172.

SUBCHAPTER 3 — OPEN-AIR FIRES

SECTION.

- 20-22-301. Enforcement — Nonliability.
- 20-22-302. Notice to Arkansas Forestry Commission of intent to burn forest vegetation.
- 20-22-303. Public nuisance — Duty to extinguish.

SECTION.

- 20-22-304. Civil action for damages.
- 20-22-305. No bond for costs of prosecution required.
- 20-22-306. Conviction as prima facie evidence in civil action.

Cross References. Unlawful burning, §§ 5-38-301, 5-38-310, 5-38-311.

Effective Dates. Acts 1981, No. 845, § 8: Mar. 28, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the penalties now prescribed by law for arson of forests and non-forest watershed lands are inadequate to deter such arson; that

this Act is designed to increase the penalties for such offenses and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

20-22-301. Enforcement — Nonliability.

(a) The Arkansas Forestry Commission shall designate those employees who shall have the powers of peace officers in the enforcement of the fire laws, the laws pertaining to the unlawful disposal of solid waste when the unlawful disposal occurs on forest land, and any criminal laws pertaining to the unlawful damage, vandalism, or theft of trees, timber, logs, or personal property when the personal property is used in forestry or logging operations.

(b) Commission employees and fire crews under their direction or control shall be allowed to enter any lands, construct fire lines, set backfires, and obtain water, if necessary, to stop a fire then actually burning or to do other work necessary in the performance of their duties without liability for trespass or reasonable damage therefrom.

(c) Upon request of the landowner or the landowner's agent and after the wildfire danger has subsided, the commission or fire crews under its direction or control shall replace the water obtained under the authority of this section.

History. Acts 1935, No. 85, § 7; Pope's Dig., § 3055; Acts 1981, No. 845, § 5; A.S.A. 1947, § 41-1957; Acts 1993, No. 521, § 1; 1995, No. 135, § 1; 1995, No. 137, § 1; 1999, No. 28, § 1; 2001, No. 362, § 1; 2005, No. 79, § 1.

Amendments. The 2001 amendment, in (b), substituted "Commission employ-

ees" for "They," inserted "and obtain water" and made minor stylistic changes; and added (c).

The 2005 amendment, in (a), deleted "the theft of property laws to the extent that they apply to theft of timber" following "fire laws" and inserted "trees, timber, logs, or."

20-22-302. Notice to Arkansas Forestry Commission of intent to burn forest vegetation.

(a)(1) Any person in this state who desires to burn forest vegetation, including debris from land clearing, shall notify the Arkansas Forestry Commission of the person's intention to burn. Notification of the proposed burning shall include the time and location of the intended burning and other facts which the person or the commission may deem relevant.

(2) This notification requirement shall not apply to the "open burning" of "yard wastes" as those terms are defined in § 8-6-1701.

(b) The landowner or other person having charge of the land or his or her agent shall be present and in attendance at the time of the burning.

(c) There shall be no liability on the part of the State of Arkansas, the commission, or any personnel of the commission for damages caused by the burning of forest vegetation under the provisions of this section.

(d) It is the intention of this section that the commission may assist or advise local landowners or their agents in the burning of forest vegetation.

(e) This section shall not apply unless the forest vegetation or debris from land clearing to be burned weighs at least one (1) ton.

History. Acts 1961, No. 246, § 1;
A.S.A. 1947, § 82-824; Acts 1999, No. 107,
§ 1.

20-22-303. Public nuisance — Duty to extinguish.

(a) Any fire on any forested, cut-over, brushlands, or grasslands burning uncontrolled is declared a public nuisance by reason of its menace to life or property.

(b)(1) Any person, firm, or corporation responsible for either the starting or the existing of such a fire is required to control or extinguish it immediately, and, if the person, firm, or corporation shall refuse, neglect, or fail to do so, the Arkansas Forestry Commission and any other organized fire suppression force may summarily abate the nuisance thus constituted by controlling or extinguishing the fire. The person, firm, or corporation responsible for the fire shall be liable for payment of all reasonable costs and expenses incurred in suppressing the fire.

(2) Should the costs and expenses of suppression not be paid within ninety (90) days of invoice date, then the costs shall be recoverable by civil action.

History. Acts 1935, No. 85, § 3; Pope's Dig., § 3051; Acts 1981, No. 845, § 4; A.S.A. 1947, § 41-1953.

20-22-304. Civil action for damages.

(a) Persons, firms, or corporations starting or being responsible for fires that cause damage to any other person shall make satisfaction in double damage to the party injured.

(b) Damages are to be recovered by civil action.

History. Acts 1935, No. 85, § 4; Pope's Dig., § 3052; A.S.A. 1947, § 41-1954.

CASE NOTES

ANALYSIS

Construction.
Applicability.
Elements of claim.
Evidence.
Pleadings.

Construction.

This section, being a part of a penal law, is to be strictly construed; the legislature did not intend to impose absolute liability for accidental damage caused by fire resulting from exploding gasoline tank where car owner was free of negligence.

Lamb v. Hibbard, 228 Ark. 270, 306 S.W.2d 859 (1957).

Being penal in nature, this section, providing for double damages, must be strictly construed, and no one can invoke its benefits who does not bring himself strictly within its terms. Cecil v. Headley, 237 Ark. 400, 373 S.W.2d 136 (1963).

Applicability.

This section does not apply to cases involving personal injuries but, rather is restricted to cases involving damages to property. Missouri Pac. R.R. v. Lester, 219 Ark. 413, 242 S.W.2d 714 (1951).

This section does not impose a civil

liability unless § 5-38-310 or § 5-38-311 are violated. *Lamb v. Hibbard*, 228 Ark. 270, 306 S.W.2d 859 (1957).

Elements of Claim.

The treble-damage remedy under § 18-60-102(a) requires a showing of intentional wrongdoing while the double-damage remedy of this section requires something less than intentional misconduct; an effective defense waged in opposition to this section would be markedly different from one mounted against § 18-60-102. *Hackleton v. Larkan*, 326 Ark. 649, 933 S.W.2d 380 (1996).

Evidence.

Under this section, plaintiff must prove negligence or fault on the part of defendant as required in ordinary damage suits based on negligence, and the legal presumption created by § 5-38-311(a)(3) may not be used in connection with the testimony in deciding whether defendant was negligent or at fault and, therefore, liable for damages. *Thomas v. Raney*, 233 Ark. 836, 349 S.W.2d 129 (1961).

Where the same fire which is the basis for a criminal conviction is the basis for a later suit for civil damages, the conviction is admissible in civil actions not only in behalf of the prosecuting witness in the criminal case but also in behalf of "any other person" suffering damages from the fire. *Cecil v. Headley*, 237 Ark. 400, 373 S.W.2d 136 (1963).

Evidence was sufficient to support the jury verdict as to "necessary precaution." *Whiteside v. Tyner*, 238 Ark. 985, 386 S.W.2d 239 (1965).

Pleadings.

In a civil suit by landowner to recover damages for loss by fire, trial court did not err in refusing to award double damages, notwithstanding the jury's verdict, where double damages were not requested in the pleadings. *Cecil v. Headley*, 237 Ark. 400, 373 S.W.2d 136 (1963).

Cited: *Armstrong v. Lloyd*, 230 Ark. 226, 321 S.W.2d 380 (1959); *Ginter v. Stallcup*, 641 F. Supp. 939 (E.D. Ark. 1986), 869 F.2d 384, (8th Cir. 1989).

20-22-305. No bond for costs of prosecution required.

No bond for costs shall be required in any courts of this state for prosecution for violation of §§ 20-22-301 and 20-22-303 — 20-22-306.

History. Acts 1935, No. 85, § 8; Pope's Dig., § 3056; A.S.A. 1947, § 41-1958.

Publisher's Notes. Acts 1935, No. 85,

§ 8, is also codified as §§ 5-38-310(b), 5-38-311(b).

20-22-306. Conviction as prima facie evidence in civil action.

Conviction for violation of § 5-38-310 or any part of § 5-38-311 shall be prima facie evidence of responsibility in civil action to recover damages or suppression costs under § 20-22-304.

History. Acts 1935, No. 85, § 5; Pope's Dig., § 3053; A.S.A. 1947, § 41-1955.

CASE NOTES

ANALYSIS

Admissibility.
Sufficiency.

Admissibility.

Where the same fire which is the basis for a criminal conviction is the basis for a later suit for civil damages, the conviction is admissible in civil actions not only in

behalf of the prosecuting witness in the criminal case but also in behalf of "any other person" suffering damages from the fire. *Cecil v. Headley*, 237 Ark. 400, 373 S.W.2d 136 (1963).

Sufficiency.

Evidence insufficient to support the jury verdict as to "necessary precaution."

Whiteside v. Tyner, 238 Ark. 985, 386 S.W.2d 239 (1965).

SUBCHAPTER 4 — LONG-TERM CARE FACILITIES

SECTION.

- 20-22-401. Legislative findings.
20-22-402. Maintenance of sensor devices.
20-22-403. Reimbursement.

SECTION.

- 20-22-404. Rules and regulations adopted by the Office of Long-Term Care.

Cross References. Anti-arson information from insurance applicants, § 23-88-201 et seq.

Effective Dates. Acts 1979, No. 374, § 5: Mar. 12, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that many nursing homes in the State are not equipped with appropriate smoke or particle sensor devices to warn of fire or smoke hazards in the facility and that the installation of such equipment is essential to protect the health and safety of the residents of such nursing home facilities; that this Act requires installation of appropriate smoke or particle sensor devices in all nursing homes on or before July 1, 1979, and should be given effect immediately to enable nursing homes to purchase and install required equipment on or before that date. Therefore, an emergency is hereby declared to exist and this Act being neces-

sary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 570, § 3: Mar. 18, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that many licensed nursing homes in the State are not equipped with either sprinkler systems or appropriate smoke or particle sensor device systems; that the installation of such equipment is desirable to protect the health and safety of the residents in such facilities; and that this Act should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

ALR. Liability of person furnishing, installing, or servicing burglary or fire

alarm system for burglary or fire loss. 37 ALR 4th 47.

20-22-401. Legislative findings.

The General Assembly finds that it is desirable that every licensed long-term care facility in this state install and maintain either a sprinkler system throughout the facility or an approved smoke or particle sensor device system with visual signals outside each patient room.

History. Acts 1979, No. 374, § 1; 1981, No. 570, § 1; A.S.A. 1947, § 82-847.

Publisher's Notes. Acts 1981, No. 570, § 1, provided, in part, that a previous

requirement that licensed nursing homes install approved smoke or particle sensor device systems before June 30, 1981, was specifically repealed.

20-22-402. Maintenance of sensor devices.

The smoke or particle sensor devices required to be installed in nursing homes by this subchapter shall be maintained in working order by the respective long-term care facilities at all times.

History. Acts 1979, No. 374, § 4;
A.S.A. 1947, § 82-850.

20-22-403. Reimbursement.

(a) Licensed long-term care facilities participating in the Title XIX Cost Reimbursement Program for Long-Term Care Facilities which elect to install smoke or particle sensor devices shall claim reimbursement for approved purchase and installation costs over a five-year period on the annual statistical and financial report as required by the Office of Long-Term Care, in order to assure this state's receipt of federal financial participation.

(b) The costs will be considered allowable for reimbursement purposes when capitalized over a five-year period and depreciated on a straight-line basis.

(c) Reimbursement in these instances shall be made through the normal prospective rate-setting procedures based on historical cost report data.

History. Acts 1979, No. 374, § 2; 1981, No. 570, § 2; A.S.A. 1947, § 82-848.
U.S. Code. The Title XIX Cost Reimbursement Program for Long-Term Care Facilities, referred to in this section, is codified as 42 U.S.C. § 1396 et seq.

20-22-404. Rules and regulations adopted by the Office of Long-Term Care.

The Office of Long-Term Care of the appropriate division as determined by the Director of the Department of Health and Human Services may adopt appropriate rules and regulations to carry out the purpose and intent of this subchapter.

History. Acts 1979, No. 374, § 3;
A.S.A. 1947, § 82-849.

SUBCHAPTER 5 — MULTIPLE-OCCUPANCY FACILITIES

SECTION.

- 20-22-501. Applicability.
- 20-22-502. Penalties.
- 20-22-503. Enforcement of fire, police, and safety regulations by employee.

SECTION.

- 20-22-504. Emergency lighting.
- 20-22-505. Fire escapes.
- 20-22-506. Fire alarms.
- 20-22-507. Posting of subchapter.

Cross References. Anti-arson information from insurance applicants, § 23-88-201 et seq.

RESEARCH REFERENCES

ALR. Liability of person furnishing, installing, or servicing burglary or fire alarm system for burglary or fire loss. 37 ALR 4th 47.

20-22-501. Applicability.

(a) Every person, firm, partnership, copartnership, association, corporation, or other business entity owning or operating any hotel, motel, apartment building, or other similar multiple-occupancy facility affected by this subchapter shall, with respect to buildings constructed prior to July 19, 1971, bring the buildings within conformance to this subchapter on or before July 19, 1972.

(b) All new hotels, motels, apartment buildings, or other similar multiple-occupancy facilities constructed from and after July 19, 1971, shall conform to this subchapter.

History. Acts 1971, No. 239, § 4; A.S.A. 1947, § 82-828.

20-22-502. Penalties.

(a)(1) Every person operating any hotel, motel, apartment building, or other similar multiple-occupancy facility who shall fail or refuse to properly install and maintain an emergency lighting system, fire escape stairway and ladders, and a fire alarm system, in accordance with this subchapter, shall be guilty of a violation.

(2) Upon conviction, the person shall be subject to a fine of not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000).

(b) Every day that such a violation continues shall constitute a separate offense.

History. Acts 1971, No. 239, § 7; A.S.A. 1947, § 82-831; Acts 2005, No. 1994, § 120. inserted the present subdivision designations in (a); and substituted "violation" for "misdemeanor" in (a)(1).

Amendments. The 2005 amendment

20-22-503. Enforcement of fire, police, and safety regulations by employee.

(a) Every person operating any hotel, motel, apartment building, or other similar multiple-occupancy facility shall employ one (1) or more persons who shall be on duty on the premises, when they are occupied, from 6:00 p.m. until 8:00 a.m. seven (7) days a week.

(b) It shall be the duty of the persons to enforce all fire, police, and safety regulations and to prevent entry to the premises by unauthorized

persons or, if the unauthorized entry cannot be prevented, to report it to proper authorities.

History. Acts 1971, No. 239, § 5;
A.S.A. 1947, § 82-829.

20-22-504. Emergency lighting.

(a) Any hotel, motel, apartment building, or other similar multiple-occupancy facility having more than three (3) floors above ground level shall be equipped with an emergency lighting system, including exit lights, corridor lights, exit stairway lights, and an emergency source of power capable of furnishing sufficient power to operate the emergency lighting system in the building in case of failure of the main lighting system.

(b) The emergency lighting system required in this section shall be so designed that it will be automatically activated by a disruption of electrical power for any reason.

History. Acts 1971, No. 239, § 1;
A.S.A. 1947, § 82-825.

20-22-505. Fire escapes.

Every hotel, motel, apartment building, or other similar multiple-occupancy facility having more than three (3) floors above ground level shall be constructed or equipped with fire escape stairways or ladders in conformity with the State Fire Prevention Code.

History. Acts 1971, No. 239, § 2; "State Fire Prevention Code" is an apparent reference to the Fire Prevention Act, A.S.A. 1947, § 82-826.
A.C.R.C. Notes. The reference to the § 12-13-101 et seq.

20-22-506. Fire alarms.

(a) Every hotel, motel, apartment building, or other similar multiple-occupancy facility having more than three (3) floors above ground level shall also be equipped with a fire alarm system conforming to the minimum requirements of the State Fire Prevention Code.

(b) The system shall consist of at least one (1) bell or warning device on each floor so situated as to provide a clearly audible warning to persons in every room on the floor.

History. Acts 1971, No. 239, § 3; "State Fire Prevention Code" is an apparent reference to the Fire Prevention Act, A.S.A. 1947, § 82-827.
A.C.R.C. Notes. The reference to the § 12-13-101 et seq.

20-22-507. Posting of subchapter.

A copy of this subchapter shall be posted in each guest room or suite of all hotels, motels, apartment buildings, or other similar multiple-occupancy facilities subject to this subchapter.

History. Acts 1971, No. 239, § 6;
A.S.A. 1947, § 82-830.

SUBCHAPTER 6 — FIRE EXTINGUISHERS

SECTION.

- 20-22-601. Legislative intent.
- 20-22-602. Definitions.
- 20-22-603. Exceptions.
- 20-22-604. Penalties.
- 20-22-605. Report and investigation of violations.
- 20-22-606. Arkansas Fire Protection Licensing Board — Creation — Members.
- 20-22-607. Arkansas Fire Protection Licensing Board — Powers and duties.
- 20-22-608. State Fire Marshal — Powers and duties.

SECTION.

- 20-22-609. License, permit, or certificate required — Compliance with subchapter — Penalties.
- 20-22-610. License, permit, or certificate — Application — Fees.
- 20-22-611. License, permit, or certificate — Qualifications.
- 20-22-612. License, permit, or certificate — Previously engaged persons.
- 20-22-613. Prohibited acts.
- 20-22-614. Service and repair of fixed fire extinguisher systems.

Effective Dates. Acts 1979, No. 100, § 3: Feb. 11, 1979. Emergency clause provided: "It is hereby found by the General Assembly that the immediate passage of this Act is necessary because many businesses in this State have fixed fire extinguisher systems which, although they do not meet the standards set in subsection (i) of Section 2 of Act 743 of 1977, are considered sufficient by the fire insurance industry, that the insurance companies require that these systems be serviced and repaired periodically for the continuance of fire insurance for these Arkansas businesses, the Arkansas Fire Extinguisher Serviceman and Installer Advisory Board does not allow persons or firms licensed and registered by it to repair or service these systems, thereby placing the fire insurance of these businesses in jeopardy of being cancelled, and that the immediate passage of this Act is necessary to protect the many businesses from loss of their fire insurance which would leave them and their clients and customers unprotected. Therefore, an emergency is declared to exist and this Act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 862, § 4: Apr. 11, 1979. Emergency clause provided: "It is hereby found by the General Assembly that the immediate passage of this Act is necessary

because many businesses in this State have fixed fire extinguisher systems which do not meet the definition of subsection (d) of Section 2 of Act 743 of 1977 and which could be serviced by unqualified and unlicensed servicemen, and that the immediate passage of this Act is necessary to protect the many businesses from hiring an unqualified and unlicensed firm to service their fixed fire extinguisher system which could result in improper servicing and because many firms who install fixed fire extinguisher systems might try to install a system which would provide less than adequate and proper protection. Therefore, an emergency is declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for

the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of

time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

RESEARCH REFERENCES

ALR. Products liability: firefighting equipment. 19 ALR 4th 326.

20-22-601. Legislative intent.

It is the purpose and intent of this subchapter to provide for monitoring the sale, installation, and servicing of portable fire extinguishers and the sale, installation, and servicing of fixed fire extinguisher systems and the sale, installation, or servicing of fire protection sprinkler systems and to provide for the registration and licensure of businesses and persons providing the services, in order to protect and promote public safety by minimizing personal injury and property damages which might result from inadequate, unreliable, unsafe, or improperly installed or maintained portable fire extinguishers, fixed fire extinguisher systems, or fire protection sprinkler systems.

History. Acts 1987, No. 532, § 1.

A.C.R.C. Notes. Former § 20-22-601, concerning the legislative intent of the subchapter, is deemed to have been super-

seded by this section. The former section was derived from the following sources: Acts 1977, No. 743, § 1; 1985, No. 702, § 1; A.S.A. 1947, § 82-832.

20-22-602. Definitions.

As used in this subchapter:

- (1) "Board" means the Arkansas Fire Protection Licensing Board;
- (2) "Fire marshal" means the State Fire Marshal;
- (3) "Fire protection sprinkler system" means:

(A) An assembly of underground or overhead piping or conduits that convey water with or without other agents to dispersal openings or devices in order to extinguish, control, or contain fire and so provide protection from exposure to fire or the products of combustion; and

(B) A standpipe and hose system as defined under the provisions of National Fire Protection Association pamphlet number fourteen (No. 14);

(4) "Fire sprinkler systems inspector" means a person who is employed full time by a licensed fire sprinkler contractor in the State of Arkansas and who has met the requirements to perform inspections of fire sprinkler systems in accordance with this subchapter;

(5) "Firm" means any person, partnership, corporation, or association;

(6) "Fixed fire extinguisher systems" means those fire extinguisher systems such as, but not limited to:

(A) Those installed in exhaust systems designed for removal of smoke and grease-laden vapors from commercial cooking equipment which protect the hoods and ducts; and

(B) Those listed or approved fire extinguisher systems installed and maintained according to the standards adopted in the rules and regulations of the board;

(7) "Hydrostatic testing" means pressure testing by hydrostatic methods;

(8) "NICET" means the National Institute for the Certification in Engineering Technologies;

(9) "Portable fire extinguisher" means any device that contains within it chemicals, fluids, powder, liquids, or gases for extinguishing fires;

(10) "Responsible managing employee" means an individual who is a full-time employee of a firm holding a certificate of registration for installing or servicing fire protection sprinkler systems and who is designated by the firm to be responsible for making sure that all installations and servicing of fire protection sprinkler systems is done in accordance with this subchapter; and

(11) "Service and servicing" means servicing or physically installing portable fire extinguishers or fixed fire extinguisher systems by charging, filling, maintaining, recharging, refilling, repairing, hanging, locating, or retesting.

History. Acts 1977, No. 743, § 2; 1979, No. 862, § 1; 1983, No. 782, §§ 1-4; 1985, No. 702, § 2; A.S.A. 1947, § 82-833; Acts 1987, No. 532, § 2; 1993, No. 1215, § 1; 1999, No. 1287, § 1; 2003, No. 1074, § 1.

A.C.R.C. Notes. As enacted, Acts 1993, No. 1215, § 1, also provided, in part, that

"N.F.P.A." means the National Fire Protection Association and "NICET" means National Institute for the Certification in Engineering Technologies.

Amendments. The 2003 amendment added (3)(B) and made related changes.

20-22-603. Exceptions.

(a) The provisions of this subchapter do not apply to the following:

(1) The filling or charging of a portable fire extinguisher by the manufacturer prior to its initial sale;

(2) The servicing by a firm of its own portable fire extinguishers, fixed systems, or fire protection sprinkler systems by its own personnel specially trained for that servicing;

(3) The hydrostatic testing by a firm of its own United States Department of Transportation-specification compressed gas cylinders used for or with fire extinguishers or its own pressure vessels, other than department-specification cylinders used as fire extinguishers, when the testing is performed by personnel of the firm who have been specially trained to perform the testing;

(4) Firms engaged in the retailing or wholesaling of portable fire extinguishers but not engaged in the installing, servicing, or recharging

of portable fire extinguishers shall only be exempt from the registration and licensing provisions as outlined in § 20-22-610, but all other provisions of this subchapter shall apply; and

(5) Fire departments recharging portable fire extinguishers as a public service when a nominal charge or no charge is made, provided that:

(A) The members of the fire department performing the services are trained in the proper filling and recharging of the fire extinguishers;

(B) The servicing is performed according to the standards adopted and the rules and regulations of the Arkansas Fire Protection Licensing Board, specifically to National Fire Protection Association pamphlet number ten (No. 10), "Portable Fire Extinguishers"; and

(C) At least one (1) member of each fire department servicing portable fire extinguishers holds a license issued by the board.

(b) However, all persons and firms shall comply with all the provisions of § 20-22-613(a), (b), and (e).

(c) The board may conduct hearings or proceedings concerning any person or firm violating this section and fine the firm not less than twenty-five dollars (\$25.00) nor more than three hundred dollars (\$300) for a first offense and for a second offense committed within five (5) years not less than three hundred dollars (\$300) nor more than one thousand dollars (\$1,000). Additionally, the board may require the firm to pay all necessary and proper costs incurred in correcting any action or work performed by them in violation of this section. Third and subsequent violations within a five-year period shall be considered a misdemeanor and punishable by a fine of not less than one thousand dollars (\$1,000) or imprisonment in the county jail for not less than one (1) month nor more than six (6) months, or both.

History. Acts 1977, No. 743, § 9; 1983, No. 782, §§ 11, 12; 1985, No. 702, § 8; A.S.A. 1947, § 82-840; Acts 1987, No. 532, § 5; 1991, No. 392, § 1; 1993, No. 1215, § 2; 2003, No. 1074, § 2.

Amendments. The 2003 amendment inserted the subdivision designations in (a)(5); deleted former (a)(6); and made stylistic changes.

20-22-604. Penalties.

The Arkansas Fire Protection Licensing Board may conduct hearings or proceedings concerning any person or firm violating this subchapter and fine them not less than twenty-five dollars (\$25.00) nor more than three hundred dollars (\$300) for a first offense and for a second offense committed within five (5) years not less than three hundred dollars (\$300) nor more than one thousand dollars (\$1,000). Additionally, the board may require the firm to pay all necessary and proper costs incurred in correcting any action or work performed by it in violation of this subchapter. Third and subsequent violations within a five-year period shall be considered a misdemeanor and punishable by a fine of not less than one thousand dollars (\$1,000) or imprisonment in the

county jail for not less than one (1) month nor more than six (6) months, or both.

History. Acts 1977, No. 743, § 15; A.S.A. 1947, § 82-846; Acts 1991, No. 392, § 2; 1993, No. 1215, § 3.

20-22-605. Report and investigation of violations.

(a) The Department of Labor and other state and local agencies and officers may cooperate with and assist the Arkansas Fire Protection Licensing Board in administering and enforcing this subchapter by reporting to the board any violations of this subchapter or any failure to comply with this subchapter or the policies adopted by the board pursuant to the authority granted in this subchapter.

(b) When any violation of this subchapter or of any policy of the board adopted pursuant to this subchapter is discovered by or reported to the board, the board shall investigate the violation and take appropriate action.

History. Acts 1977, No. 743, § 13; A.S.A. 1947, § 82-844.

20-22-606. Arkansas Fire Protection Licensing Board — Creation — Members.

(a) There is created the Arkansas Fire Protection Licensing Board, which shall be composed of eleven (11) members who are residents of the state, to be appointed by the Governor for terms of five (5) years, as follows:

(1) One (1) member shall be appointed from each of the four (4) congressional districts, and of these members, one (1) member shall be an industrial safety engineer; and

(2)(A) Each of the other members shall be experienced and knowledgeable in one (1) or more of the following areas:

- (i) The servicing of portable fire extinguishers;
- (ii) The installation or servicing of fixed fire extinguisher systems;
- (iii) Fire extinguisher manufacturing;
- (iv) Fire insurance inspection or underwriting; or
- (v) Fire services.

(B)(i) One (1) member shall be the State Fire Marshal.

(ii) One (1) member shall be a representative of an association of fire chiefs.

(iii) One (1) member shall be a representative of the fire insurance industry.

(iv) Two (2) members shall be representatives of large industrial users of fire extinguisher equipment or restaurant associations.

(v) Two (2) members shall be experienced, knowledgeable, and active in the installation or servicing of fire protection sprinkler systems.

(b) Each member may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(c)(1) In addition, the board may expend moneys as necessary for stationery, office supplies, application forms, and other materials necessary for the board to carry out its duties.

(2) The expense reimbursement and stipends authorized by § 25-16-901 et seq. and miscellaneous office supplies shall be paid from the fees collected by the board.

(d) The secretary of the board shall receive additional salary as may be fixed by the board.

History. Acts 1977, No. 743, §§ 3, 6; 1979, No. 543, § 1; 1983, No. 660, § 1; 1983, No. 782, § 6; 1985, No. 702, § 3; A.S.A. 1947, §§ 82-834 — 82-834.3, 82-837; Acts 1991, No. 392, § 3; 1993, No. 1215, § 4; 1997, No. 250, § 194.

Publisher's Notes. Acts 1983, No. 782, § 1, renamed the Fire Extinguisher Serviceman and Installer Advisory Board as the Fire Extinguisher Board.

The terms of the members of the Fire Extinguisher Board, other than the terms

of the two members experienced in the installation or servicing of fire protection sprinkler systems, are arranged so that two terms expire every year except that in the fifth year only one term expires. Acts 1985, No. 702, § 3 provided, in part, that one of the initial two members experienced in the installation or servicing of fire protection sprinkler systems would be appointed for a four-year term; the other would be appointed for a five-year term.

20-22-607. Arkansas Fire Protection Licensing Board — Powers and duties.

The Arkansas Fire Protection Licensing Board shall:

(1) Formulate and administer such policies as may be determined necessary for the protection and preservation of life and property in regard to:

(A) The registration of firms engaging in the business of servicing portable fire extinguishers or installing and maintaining fixed fire extinguisher systems;

(B) The registration of firms engaged in the business of hydrostatic testing of portable fire extinguishers. However, no person or firm shall be granted a Class A hydrostatic testing certificate until the applicant submits proof satisfactory to the board that the test equipment of the applicant has been tested and certified by the United States Department of Transportation;

(C) The examination and licensure of persons applying for a license to service portable fire extinguishers and to install fixed fire extinguisher systems;

(D) The registration of firms engaged in the business of installing or servicing fire protection sprinkler systems, including standpipe and hose systems;

(E) The examination and licensing of any person desiring to be licensed as a responsible managing employee for the purpose of installing or servicing fire protection sprinkler systems, including standpipe and hose systems; and

(F) The examination and licensing of persons desiring to be licensed as fire sprinkler inspectors for the purpose of inspection of fire sprinkler systems;

(2) Establish reasonable qualifications for firms or individuals for a certificate of registration or license to engage in the business of servicing portable fire extinguishers, installing fixed fire extinguisher systems, or installing or servicing fire protection systems;

(3) Conduct examinations to ascertain the qualifications and fitness of applicants for a license to service portable fire extinguishers, install fixed fire extinguisher systems, or install or service fire protection sprinkler systems;

(4) Issue certificates of registration for those firms that qualify to engage in the business of servicing portable fire extinguishers, installing and servicing fixed fire extinguisher systems, or installing or servicing fire protection sprinkler systems and issue licenses, apprentice permits, and authorizations to perform hydrostatic testing to the firms or individuals who qualify;

(5) Evaluate the qualifications of firms seeking approval as testing laboratories for portable fire extinguishers; and

(6)(A) Regulate and license as a part of a fire protection sprinkler system the installation, servicing, and maintenance of a standpipe and hose system as defined under the provisions of National Fire Protection Association pamphlet number fourteen (No. 14).

(B)(i) The installation, servicing, and maintenance of a standpipe and hose system shall be performed by a licensed fire sprinkler contractor.

(ii) However, the design of the standpipe and hose system shall be:

(a) Designed, installed, and tested according to the standards adopted in the "Rules and Regulations Applicable to Fire Protection Sprinkler Systems" of the board and, specifically, the provisions of the appropriate National Fire Protection Association pamphlets;

(b) Designed by an Arkansas-licensed responsible managing employee or a registered professional engineer licensed by the State of Arkansas; and

(c) Installed by a fire sprinkler contractor licensed by the board.

History. Acts 1977, No. 743, § 11; 1983, No. 782, § 13; 1985, No. 702, § 9; A.S.A. 1947, § 82-842; Acts 1993, No. 1215, § 5; 1999, No. 1287, § 2; 2003, No. 1074, § 3.

Amendments. The 2003 amendment inserted "including standpipe and hose systems" in (1)(D) and (E); and added (6) and made related changes.

20-22-608. State Fire Marshal — Powers and duties.

The State Fire Marshal shall advise with and assist the Arkansas Fire Protection Licensing Board in the adoption of policies and procedures for the effective monitoring of the sale, installation, and servicing of portable fire extinguishers, fixed fire extinguisher systems, and fire protection sprinkler systems and for the registration and licensing of businesses and persons providing these services.

History. Acts 1977, No. 743, § 4; 1985, No. 702, § 4; A.S.A. 1947, § 82-835; Acts 1987, No. 532, § 3.

20-22-609. License, permit, or certificate required — Compliance with subchapter — Penalties.

(a) Except as provided in § 20-22-613, no person may do any of the following:

(1) Engage in the business of servicing portable fire extinguishers without a current certificate of registration and unless covered by liability insurance with policy limits no less than three hundred thousand dollars (\$300,000);

(2) Engage in the business of installing or servicing fixed fire extinguisher systems without a current certificate of registration;

(3) Service portable fire extinguishers or fixed fire extinguisher systems without a current license;

(4) Perform hydrostatic testing of portable fire extinguishers manufactured in accordance with the specifications of the United States Department of Transportation without a current hydrostatic testing certificate;

(5) Obtain or attempt to obtain a certificate of registration or license by fraudulent representation;

(6) Sell, service, or install portable fire extinguishers or fixed fire extinguisher systems or fire protection sprinkler systems contrary to this subchapter or the policies formulated and administered under the authority of this subchapter;

(7) Engage in the business of installing or servicing fire protection sprinkler systems without a current certificate of registration and without employing a full-time licensed responsible managing employee; and

(8) Engage in the inspection of fire sprinkler systems without employing a full-time licensed fire sprinkler systems inspector.

(b)(1) The Arkansas Fire Protection Licensing Board may conduct hearings or proceedings concerning complaints filed, as provided for in this subchapter, against any licensed person or firm and suspend or revoke their license, place the firm on probation, fine the firm not less than twenty-five dollars (\$25.00) nor more than three hundred dollars (\$300) for a first offense and for a second offense committed within five (5) years not less than three hundred dollars (\$300) nor more than one thousand dollars (\$1,000).

(2) Additionally, the board may require the firm to pay all necessary and proper costs incurred in correcting any action or work performed by the firm in violation of this subchapter. The board may refuse to issue new or renewal licenses, apprentice permits, hydrostatic testing certificates, or certificates of registration issued under this subchapter.

History. Acts 1977, No. 743, §§ 10, 12; 1987, No. 532, § 6; 1993, No. 1215, § 6; 1981, No. 404, § 1; 1985, No. 702, §§ 10, 11; A.S.A. 1947, §§ 82-841, 82-843; Acts 1987, No. 1287, § 3.

20-22-610. License, permit, or certificate — Application — Fees.

(a) Applications for licenses, permits, and certificates provided for in this section shall be made pursuant to and in accordance with policies adopted by the Arkansas Fire Protection Licensing Board and on forms prescribed by the board.

(b)(1) Each firm or person desiring to engage in or to continue to engage in the business of servicing portable fire extinguishers, installing or servicing fixed fire extinguisher systems, performing hydrostatic testing of fire extinguishers, or installing or servicing fire protection sprinkler systems in the State of Arkansas shall as a condition of engaging in such a business or occupation obtain from the board a certificate of registration or a license as prescribed in this section.

(2) Each firm engaged in the business of servicing portable fire extinguishers or installing or servicing fixed fire extinguisher systems in this state shall obtain a certificate of registration and shall pay the following fees:

(A) For engaging in the business of servicing portable fire extinguishers, the fee for the initial certificate of registration shall be no more than three hundred dollars (\$300), and the annual renewal fee shall be no more than three hundred dollars (\$300); and

(B) For engaging in the business of installing or servicing fixed fire extinguisher systems, the fee for the initial certificate of registration shall be no more than three hundred dollars (\$300), and the annual renewal fee shall be no more than three hundred dollars (\$300).

(3) Each employee of a firm engaging in the business of servicing portable fire extinguishers or installing or servicing fixed fire extinguishers who services or installs such fire extinguishers, other than an apprentice, shall obtain a license therefor and pay the following fees:

(A) For a license to service portable fire extinguishers, an initial fee of no more than thirty dollars (\$30.00), and for each annual renewal thereof a fee of no more than thirty dollars (\$30.00); and

(B) For a license to install or service fixed fire extinguisher systems, an initial fee of no more than thirty dollars (\$30.00), and an annual renewal fee of no more than thirty dollars (\$30.00).

(4) Each firm performing hydrostatic testing of United States Department of Transportation specification compressed gas cylinders used for or with fire extinguishers, as a condition of engaging in such a business, shall obtain a Class A hydrostatic testing certificate and shall pay therefor an initial fee of one hundred dollars (\$100) and an annual renewal fee of seventy-five dollars (\$75.00).

(5) Each firm performing hydrostatic testing of pressure vessels used as fire extinguishers, other than the United States Department of Transportation specification cylinders, as a condition of engaging in such a business, shall obtain a Class B hydrostatic testing certificate and shall pay therefor an initial fee of fifty dollars (\$50.00) and an annual renewal fee of twenty-five dollars (\$25.00).

(6)(A) Each person servicing portable fire extinguishers or fixed fire extinguisher systems as an apprentice shall, before servicing any

portable fire extinguisher or any fixed fire extinguisher system, apply to the board for an apprentice permit.

(B) Each application for an apprentice permit shall be accompanied by a fee of fifteen dollars (\$15.00).

(C) A copy of the application may be used by the applicant as proof of his or her being temporarily licensed as an apprentice until the official apprentice permit is issued or denied by the board.

(D) An apprentice permit shall be valid for one (1) year from the date of issue and shall not be renewable.

(7)(A) Each person desiring to take an examination in order to obtain a license as required in this subchapter, except a license for fire protection sprinkler systems, shall make application to the board's secretary and pay a fee not to exceed fifteen dollars (\$15.00) per individual examination section with a maximum not to exceed fifty dollars (\$50.00) for all sections taken at the same time.

(B) It is further provided that the fees are to be paid each separate time an examination or series of examinations is taken.

(8) Each firm engaged in the business of installing or servicing fire protection sprinkler systems in this state shall obtain a certificate of registration and pay the following fees:

(A) An initial application fee for the certificate of registration shall be in an amount not to exceed one hundred dollars (\$100); and

(B) A fee for issuance of either the initial or renewal certificate of registration shall be in an amount not to exceed seven hundred dollars (\$700).

(9) Each firm holding a certificate of registration for installing or servicing fire protection sprinkler systems shall have a licensed fire sprinkler systems inspector before engaging in the inspection of fire sprinkler systems and shall obtain a license issued by the board and conditioned on the successful completion of the requirements prescribed by this subchapter and the rules and regulations adopted by the board and on payment of the following fees:

(A) An examination fee not to exceed one hundred dollars (\$100) per examination shall be paid each time an applicant takes an examination; and

(B) A license fee not to exceed three hundred dollars (\$300) shall be paid for issuance of the initial license and each renewal thereof.

History. Acts 1977, No. 743, §§ 5, 10; A.S.A. 1947, §§ 82-836, 82-841; Acts 1993, 1983, No. 782, § 5; 1985, No. 702, § 5; No. 1215, § 7; 1999, No. 1287, § 4.

20-22-611. License, permit, or certificate — Qualifications.

(a) For a license to service portable fire extinguishers, a person shall:

(1) Achieve a passing score on an examination based on the rules and regulations of the Arkansas Fire Protection Licensing Board;

(2) Maintain in force at all times while licensed a public liability insurance policy covering operations and completed operations with a minimum limit of liability of three hundred thousand dollars (\$300,000)

per occurrence for bodily injury and fifty thousand dollars (\$50,000) per occurrence for property damage or a single limit of liability for bodily injury and property damage of three hundred thousand dollars (\$300,000) per occurrence; and

(3) File and maintain a certificate of insurance with the board.

(b) To obtain a license for a fire sprinkler systems inspector, an individual shall:

(1) Be employed by a registered fire sprinkler contractor; and

(2) Pass an examination based on the rules and regulations adopted by the board.

(c) This section does not apply to fire departments licensed under § 20-22-603(a)(5).

History. Acts 1977, No. 743, § 7; 1979, 702, § 6; A.S.A. 1947, § 82-838; Acts No. 862, § 2; 1983, No. 782, § 7; 1985, No. 1993, No. 1215, § 8; 1999, No. 1287, § 5.

20-22-612. License, permit, or certificate — Previously engaged persons.

Notwithstanding the provisions of this subchapter, if any person or firm engaged in the business on January 1, 1977, of servicing portable fire extinguishers, installing or servicing fixed fire extinguishers, or performing hydrostatic testing of fire extinguishers derived twenty-five percent (25%) or more of the personal or firm income from servicing fire extinguishers or installing or servicing fixed fire extinguishers or hydrostatic testing of fire extinguishers during the 1976 calendar year, the person or firm shall be registered or issued a license to continue in the business upon payment of the annual registration or license fee prescribed in this subchapter for the particular type of business, provided that the applicant's qualifications meet those requirements established by the Arkansas Fire Protection Licensing Board.

History. Acts 1977, No. 743, § 14; A.S.A. 1947, § 82-845.

20-22-613. Prohibited acts.

(a) No portable fire extinguisher or fixed fire extinguisher system may be sold or installed in this state unless it carries a label of approval of a nationally recognized testing laboratory approved by the Arkansas Fire Protection Licensing Board, provided that the board may allow the installation of a fixed fire extinguisher system other than one (1) of those enumerated in § 20-22-602(4).

(b) No soda acid or foam acid type fire extinguisher shall be sold or offered for sale in this state.

(c) Every person or firm servicing any portable fire extinguisher in this state shall service the extinguisher in accordance with the standards and procedures prescribed in the rules and regulations of the board.

(d) Every person installing or servicing a portable fire extinguisher or a fixed fire extinguisher system in this state shall affix a tag thereto showing the name of the person or firm selling, installing, or servicing the extinguisher and the date of the installation or service.

(e) The sale, servicing, or recharging of carbon tetrachloride fire extinguishers is prohibited.

(f) Except as provided in § 20-22-611, only the holder of a current and valid license or an apprentice permit issued pursuant to this subchapter may service portable fire extinguishers or install and maintain fixed fire extinguisher systems.

(g) A person who has been issued a license pursuant to this subchapter to service portable fire extinguishers or to install and service fixed fire extinguisher systems shall be an employee, agent, or servant of a firm that holds a certificate of registration issued pursuant to this subchapter.

(h) Installation and service of fixed fire extinguisher systems shall be accomplished in accordance with the rules and regulations of the board.

(i) Installation or servicing of fire protection sprinkler systems shall be accomplished in accordance with the rules and regulations of the board.

(j) Any fire protection sprinkler system that was installed prior to September 1, 1985, and which does not meet the standards set forth in the rules and regulations adopted by the board may be serviced and repaired by a firm registered pursuant to this subchapter. However, an installer of such a system shall service, when requested by an owner of the system and for a reasonable fee, that system which it has installed, so long as the installer has a current certificate of registration and a licensed responsible managing employee pursuant to this subchapter.

History. Acts 1977, No. 743, § 8; 1979, 1985, No. 702, § 7; A.S.A. 1947, § 82-839; No. 862, § 3; 1983, No. 782, §§ 8-10; Acts 1987, No. 532, § 4.

20-22-614. Service and repair of fixed fire extinguisher systems.

(a) Any fixed fire extinguisher system which was installed prior to January 1, 1979, and which does not meet the standards set forth in § 20-22-602(4), may be serviced and repaired by a person or firm licensed and registered pursuant to this subchapter.

(b) However, an installer of such a system shall service, when requested by an owner of the system and for a reasonable fee, that system which it has installed, so long as the installer has a current license and registration for servicing and repairing fixed fire extinguisher systems pursuant to this subchapter.

History. Acts 1979, No. 100, § 1; A.S.A. 1947, § 82-839.1.

SUBCHAPTER 7 — FIREWORKS

SECTION.

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20-22-714. Seizure of contraband fireworks.
20-22-715. Notice of violation — Hearing.

Effective Dates. Acts 1963, No. 34, § 3: Feb. 8, 1963. Emergency clause provided: "It is hereby found and determined by the General Assembly that the use of "Special Fireworks" is beneficial in certain agricultural and industrial operations and that under the present law of this State such fireworks may not be legally used for such purposes; that it is in the best interests of the agricultural and industrial programs of this State that the law be revised immediately to permit the use of such fireworks for such purposes and that this can be accomplished only by giving this act effect immediately. Therefore an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in effect

from and after the date of its passage and approval."

Acts 1977, No 504, § 7: July 1, 1977.

Acts 1985, No. 1041, § 3: Apr. 17, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the increased license fees provided by this Act should go into effect at the next renewal date which is July 1, 1985; that unless this emergency is adopted that this Act might not go into effect until after July 1, 1985. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Am. Jur. 31A Am. Jur. 2d, Explos., § 101 et seq.

C.J.S. 35 C.J.S., Explos., § 10 et seq.

20-22-701. Definitions.

As used in this subchapter:

(1) "Distributor" means any person engaged in the business of making sales of fireworks at wholesale in this state to any person engaged in the business of making sales of fireworks either as a jobber or a retailer, or both;

(2) "I.C.C. Class C common fireworks" means all articles of fireworks classified as "I.C.C. Class C common fireworks" as defined in § 20-22-708 and in the regulations of the Interstate Commerce Commission for the transportation of explosives and other dangerous articles;

(3) "Importer" means any person who imports, brings in, or causes to be brought in any fireworks from outside the geographical limits of the State of Arkansas into this state;

(4) "Jobber" means any person engaged in the business of making sales of fireworks at wholesale to any other person engaged in the business of making sales at retail. "Wholesaler" shall have the same meaning as "jobber";

(5) "License" means the written authority of the Director of the Department of Arkansas State Police issued under the authority of this subchapter to a distributor, jobber, wholesaler, manufacturer, importer, or retailer for a fee as provided in § 20-22-707;

(6) "Manufacturer" means any person engaged in the making or construction of fireworks in the State of Arkansas or any person engaged in the making or construction of fireworks who ships or causes to be shipped, or transports or causes to be transported, any items of fireworks into the State of Arkansas;

(7) "Permit" means the written authority of the Director of the Department of Arkansas State Police issued for a public fireworks display under the authority of this subchapter;

(8) "Person" means any corporation, association, copartnership, or one (1) or more individuals;

(9) "Retailer" means any person engaged in the business of making sales of fireworks at retail to consumers or to persons other than a distributor or jobber;

(10) "Sale" means barter, exchange, gift, or offer therefor, and each such transaction made by any person, whether as principal, proprietor, agent, servant, or employee;

(11) "Shooter" means any person conducting any combination of fireworks, pyrotechnics, or special effects displays within the State of Arkansas; and

(12) "Special fireworks" means all articles of fireworks that are classified as Class B explosives in the regulations of the Interstate Commerce Commission and shall include all articles other than those classified as Class C but shall not include such dangerous items of commercial fireworks as cherry bombs, tubular salutes, repeating bombs, aerial bombs, torpedoes, and fireworks containing more than fifty milligrams (50mg) of explosive powder.

History. Acts 1961, No. 224, § 7; 1977, No. 379, § 1; A.S.A. 1947, § 82-1707; Acts 2005, No. 2204, § 1.

A.C.R.C. Notes. The Interstate Commerce Commission, referred to in this section, was abolished by the Interstate Commerce Commission Termination Act of 1995, Pub. L. No. 104-88. The successor agency to the Interstate Commerce Com-

mission is the Surface Transportation Board.

Amendments. The 2005 amendment inserted "any person engaged in the making or construction of fireworks in the State of Arkansas or" in (6); substituted "for a public fireworks display" for "without charge" in (7); added (11); and redesignated former (11) as present (12).

20-22-702. Public displays excepted.

(a) Nothing in this subchapter shall be construed as applying to the shipping, sale, possession, and use of fireworks for public displays by holders of a permit for a public display to be conducted in accordance with the rules and regulations promulgated by the Director of the Department of Arkansas State Police. Such items of fireworks which are to be used for public display only and which are otherwise prohibited for sale and use within the state shall include display shells designed to be fired from mortars and display set pieces of fireworks classified by the regulations of the Interstate Commerce Commission as Class B special fireworks and shall not include such items of commercial fireworks as cherry bombs, tubular salutes, repeating bombs, aerial bombs, and torpedoes.

(b)(1) Public displays shall be performed only under competent supervision and after the persons or organizations making the displays have applied for and received a permit for the displays issued by the director.

(2) Applications for permits for public displays shall be made in writing at least two (2) days in advance of the proposed display, and the application shall show that the proposed display is to be so located and supervised that it shall not be hazardous to life, limb, or property.

(3) If the display is to be performed within the limits of a municipality, the application shall so state and shall bear the signed approval of the chief supervisory officials of the fire and police departments of the municipality.

(c)(1) Permits issued shall be limited to the time specified therein and shall not be transferable.

(2) Only licensed distributors who are licensed importers or who purchase from licensed importers may possess special fireworks for resale to holders of a permit for a public fireworks display.

(d)(1) The Department of Arkansas State Police may charge a fee not to exceed fifty dollars (\$50.00) for each permit issued under this section.

(2) The total fee for all permits issued during a school year to an educational institution that provides instruction for grades kindergarten through twelve (K-12) shall not exceed twenty-five dollars (\$25.00).

(3) All permit fees shall be remitted to the department and shall be deposited into the State Treasury as special revenues to the credit of the Department of Arkansas State Police Fund.

History. Acts 1961, No. 224, § 6; 1985, No. 1040, § 1; A.S.A. 1947, § 82-1706; Acts 2005, No. 2204, § 2.

A.C.R.C. Notes. The Interstate Commerce Commission, referred to in this section, was abolished by the Interstate Commerce Commission Termination Act

of 1995, Pub. L. No. 104-88. The successor agency to the Interstate Commerce Commission is the Surface Transportation Board.

Amendments. The 2005 amendment added (d).

20-22-703. Other exceptions.

(a)(1) Nothing in this subchapter shall be construed as applying to the:

(A) Manufacture, storage, sale, or use of signals necessary for the safe operation of railroads or other classes of public or private transportation or of illuminating devices for photographic use;

(B) Military or naval forces of the United States or of this state or to peace officers;

(C) Sale or use of blank cartridges for ceremonial, theatrical, or athletic events; or

(D) Transportation, sale, or use of permissible fireworks as defined in § 20-22-708 or special fireworks as defined in § 20-22-701 solely for agricultural or industrial purposes, provided that the purchaser first secures a written permit to purchase and use the fireworks for agricultural or industrial purposes from the Director of the Department of Arkansas State Police.

(2) No permit for use of fireworks for agricultural purposes shall be issued by the director except after approval of the county agricultural agent of the county in which the fireworks are to be used.

(3)(A) All fireworks purchased under permit as authorized in this section for agricultural or industrial purposes shall at all times be kept in the possession of the permit holder.

(B) The permits and fireworks shall not be transferable.

(b) Any person holding a permit to purchase and use fireworks for agricultural or industrial purposes as provided in this section who shall sell, give away, or otherwise transfer the fireworks to another or shall use or permit the use of the fireworks for any purpose other than agricultural or industrial purposes as stated on the permit shall be in violation of this subchapter and subject to the penalties provided for in § 20-22-705.

History. Acts 1961, No. 224, § 9; 1963, No. 34, § 1; A.S.A. 1947, § 82-1709; Acts 2005, No. 1994, § 121.

Amendments. The 2005 amendment inserted the subdivision (A)-(D) designations in (a)(1) and made related changes; and substituted "in violation of this subchapter and subject to the penalties pro-

vided for in § 20-22-705" for "guilty of a misdemeanor and upon conviction therefor shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200) or imprisoned for not more than ninety (90) days, or both, in the discretion of the court" in (b).

20-22-704. Power of municipalities unaffected.

This subchapter shall not affect the power of any municipality to regulate or prohibit the sale or use of fireworks.

History. Acts 1961, No. 224, § 9; 1963, No. 34, § 1; A.S.A. 1947, § 82-1709.

20-22-705. Violation of subchapter — Penalties.

Any person violating any of the provisions of this subchapter, except § 20-22-706, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200) or imprisoned for not more than ninety (90) days, or both, in the discretion of the court.

History. Acts 1961, No. 224, § 10;
A.S.A. 1947, § 82-1710.

20-22-706. License required — Penalty.

(a) No person shall do any act for which a license or permit is required by this subchapter or by local authorities acting pursuant to this subchapter unless he or she holds the proper federal, state, and local license and, if applicable, a permit.

(b) Whoever violates subsection (a) of this section shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000) and may be prohibited from applying for a license or a permit for up to five (5) years.

History. Acts 1961, No. 224, § 10;
A.S.A. 1947, § 82-1710; Acts 2005, No. 1994, § 122; 2005, No. 2204, § 3.

A.C.R.C. Notes. Pursuant to § 1-2-207, this section is set out above as amended by Acts 2005, No. 2204. This section was also amended by Acts 2005, No. 1994, to read as follows: "License required — Penalty. (a) No person shall do any act for which a license is required by this subchapter or by local authorities acting pursuant to it unless he holds the proper state and local license.

"(b) Whoever violates subsection (a) of this section shall be guilty of a violation and upon conviction shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000)."

Amendments. The 2005 amendment by No. 2204 inserted "or permit," "or she," "federal" and "and, if applicable, a permit" in (a); and inserted "and may be prohibited from applying for a license or a permit for up to five (5) years" in (b).

20-22-707. License — Application and issuance.

(a)(1) To engage in the sale of fireworks as a manufacturer, importer, distributor, wholesale jobber, retailer, or shooter, an applicant shall submit to the Director of the Department of Arkansas State Police an application on a form provided by the director before April 1 of each year setting forth such facts and information as the director may determine necessary and proper, considering the requirements of public health, safety, and welfare. The license for manufacturers, importers, distributors, wholesale jobbers, and retailers shall be effective from and shall date from May 1 of the year of issuance. The license for manufacturers, importers, distributors, wholesale jobbers, and retailers shall be valid through April 30 of the following year. The license for shooters shall be effective from and shall date from May 1 of the year of issuance. The license for shooters shall be valid through April 30 of the following fifth year. Upon approval of the application by the director and before the issuance of the license therefor, the applicant shall pay to the

director a license fee for each type of business conducted to the following schedule:

(A) Manufacturer	\$1,000.00
(B) Importer	750.00
(C) Distributor	500.00
(D) Jobber wholesaler	100.00
(E) Retailer	25.00
(F)(i) Shooter	50.00

(ii) This fee for shooters shall be waived if the applicant verifies that the applicant is a professional or volunteer firefighter.

(2)(A) However, retailers may purchase their licenses from their vendors, which include importers, distributors, or jobber wholesalers. The retailers' licenses shall be made available by the Department of Arkansas State Police to the vendors in books of twenty (20) licenses to a book. The vendors shall record the sales of the licenses to retailers and submit their records to the director semiannually on January 31 and July 31 of each year. Each semiannual report shall cover the preceding six-month period.

(B) Vendors may exchange unsold licenses for current licenses at no charge to them or may secure a refund of the fees paid for retailer licenses which are not sold by the vendor.

(C) Failure to obtain the permit shall be deemed a violation of this subchapter.

(b)(1) Renewal of outstanding licenses to engage in the sale of fireworks as a manufacturer, importer, distributor, jobber, retailer, or shooter shall be made effective by payment of the fee, as set forth in subsection (a) of this section, to the director on or before May 1 of each year.

(2) License renewal applications postmarked after May 1 of each year shall be assessed a late penalty in an amount equal to two (2) times the renewal fee, as set forth in subsection (a) of this section.

(3) An initial application postmarked after April 1 shall be assessed a late penalty in an amount equal to two (2) times the license fee, as set forth in this section.

(c) All funds collected under this subchapter by the director, including license fees and penalties, shall be deposited into the State Treasury to the credit of the Department of Arkansas State Police Fund.

(d) The director shall assign a license number to each license issued. This number shall be affixed by the person to whom such a license is issued to all invoices issued or used by each manufacturer, importer, distributor, or jobber.

(e)(1) It shall be unlawful for a jobber licensed under this subchapter or for an Arkansas-domiciled retailer to purchase fireworks from a distributor, importer, or manufacturer domiciled outside the State of Arkansas unless the distributor, manufacturer, or importer can show proof that the distributor, manufacturer, or importer holds a valid license under this subchapter to perform functions of the distributor, importer, or manufacturer, or all of them, as the case may be.

(2) In the event of a violation of this section, if the distributor, importer, or manufacturer cannot show valid proof of being properly and currently licensed under this subchapter and if purchase of fireworks is consummated by a wholesale jobber licensed under this subchapter or by an Arkansas retailer from the distributor, importer, or manufacturer, then the jobber or retailer shall become liable, as a civil penalty, for the full amount of the license fee required by this subchapter from the distributor, importer, or manufacturer. The amount of the license fee is payable immediately, or in the event of failure to pay the penalty within thirty (30) days of the violation, the distributor, importer, or manufacturer shall be subject to the criminal penalties provided by this subchapter.

(3) Furthermore, unless the out-of-state distributor, importer, or manufacturer pays the license fee required under the provisions of this subchapter within a period of thirty (30) days after being so notified by registered mail, the person shall thereafter be prohibited from engaging in the business defined in this subchapter in the State of Arkansas.

(f)(1) No permit or license provided for in this subchapter shall be transferable, nor shall a person be permitted to operate under a permit or license issued to any other person.

(2) No permit or license shall be issued to a person under twenty-one (21) years of age.

(3)(A) Each retailer and holder of a license under the provisions of this subchapter shall keep an accurate record of each shipment received.

(B) Each distributor, importer, jobber, or wholesaler shall keep a record of each shipment received and each sale, delivery, or out-shipment of fireworks.

(C) The records shall be clear, legible, and accurate, showing the name and address of the seller or purchaser, item, and quantity received or sold.

(D) The records are to be kept at each place of business and shall be subject to examination by the director or his or her agents who shall have the authority at any time to require any manufacturer, importer, distributor, wholesaler, jobber, or retailer to produce records for the current year and the immediately preceding full license year.

(E) Each shooter shall keep a record of the date, location, and type of display conducted within the State of Arkansas.

(g) Mail-order sales of fireworks to consumers through any medium of interstate or intrastate commerce are prohibited. Sales of fireworks to consumers may be made only at properly licensed retail locations within the State of Arkansas. Any person violating this subsection shall be guilty of a Class C misdemeanor.

(h) The director may revoke or deny an application for any license or permit at any time for violating any provision of this subchapter or for falsifying any information provided to the department as part of an application for a license or permit.

(i) The director may promulgate rules necessary to enforce this subchapter.

History. Acts 1961, No. 224, § 8; 1977, No. 379, § 2; 1977, No. 504, §§ 1-4; 1985, No. 278, § 1; 1985, No. 1041, § 2; A.S.A. 1947, § 82-1708; Acts 1991, No. 677, § 1; 2005, No. 2204, § 4.

Amendments. The 2005 amendment inserted "or shooter" and "The license for shooters ... following fifth year" in (a)(1); substituted "750.00" for "500.00" in (a)(1)(B); substituted "500.00" for "250.00" in (a)(1)(C); substituted "100.00" for

"50.00" in (a)(1)(D); substituted "25.00" for "10.00" in (a)(1)(E); added (a)(1)(F); in (b)(1), inserted "or shooter" and made related changes and deleted "annual" preceding "fee"; deleted "annual" preceding "renewal" in (b)(2); in (c), inserted "Department of Arkansas" preceding "State Police" and deleted "These funds are to be used for the enforcement of this subchapter" from the end; and added (f)(3)(E), (h) and (i).

20-22-708. Possession, sale, and use unlawful — Exceptions.

(a) It shall be unlawful for any person to possess, sell, or use, within the State of Arkansas, or ship into the State of Arkansas, except as provided in § 20-22-711, any pyrotechnics, commonly known as fireworks, other than the permissible items enumerated in this section, except as provided in this subchapter. The permissible fireworks consist of those defined in Interstate Commerce Commission regulations described as Class C fireworks only and shall include the following:

(1) Roman candles, with no handle or spike affixed thereto, not exceeding ten (10) balls spaced uniformly in the tube, total pyrotechnic composition not to exceed twenty grams (20 g) each in weight. The inside tube diameter shall not exceed three-eighths inch ($\frac{3}{8}$ ");

(2) Sky rockets, with sticks, total pyrotechnic composition not to exceed twenty grams (20 g) each in weight. The inside tube diameter shall not exceed one-half inch ($\frac{1}{2}$ "). The rocket sticks shall be securely fastened to the tubes;

(3) Helicopter-type rockets, total pyrotechnic composition not to exceed twenty grams (20 g) each in weight. The inside tube diameter shall not exceed one-half inch ($\frac{1}{2}$ ");

(4) Cylindrical fountains, total pyrotechnic composition not to exceed seventy-five grams (75 g) each in weight. The inside tube diameter shall not exceed three-fourths inch ($\frac{3}{4}$ ");

(5) Cone fountains, total pyrotechnic composition not to exceed fifty grams (50 g) each in weight;

(6) Wheels, total pyrotechnic composition not to exceed sixty grams (60 g) for each driver unit or two hundred forty grams (240 g) for each complete wheel. The inside tube diameter of driver units shall not exceed one-half inch ($\frac{1}{2}$ ");

(7) Illuminating torches and colored fire in any form, except items included in subdivision (a)(12) of this section, total pyrotechnic composition not to exceed one hundred grams (100 g) in weight;

(8) Sparklers and dipped sticks, total pyrotechnic composition not to exceed one hundred grams (100 g) each in weight. Pyrotechnic composition containing any chlorate or perchlorate shall not exceed five grams (5 g);

(9) Mines and shells of which the mortar is an integral part, total pyrotechnic composition not to exceed forty grams (40 g) each in weight;

(10) Firecrackers and salutes with casings, the external dimensions of which do not exceed one and one-half inches (1½") in length or one-quarter inch (¼") in diameter, and other items designed to produce an audible effect, total pyrotechnic composition not to exceed two grams (2 g) each in weight;

(11) Novelties consisting of two (2) or more devices enumerated in this subsection, trick matches, and cigarette plugs, when approved by the Federal Bureau of Explosives;

(12) Railway fusees, truck flares, hand ship distress signals, smoke signals, and smoke pots.

(b) No component of any device listed in this section which is designed to produce an audible effect shall contain pyrotechnic composition in excess of two grams (2 g) in weight excluding propelling or expelling charges.

History. Acts 1961, No. 224, § 1; A.S.A. 1947, § 82-1701.

A.C.R.C. Notes. The Interstate Commerce Commission, referred to in this section, was abolished by the Interstate

Commerce Commission Termination Act of 1995, Pub. L. No. 104-88. The successor agency to the Interstate Commerce Commission is the Surface Transportation Board.

CASE NOTES

Cited: Harvey v. Shaver, 247 Ark. 92, 444 S.W.2d 256 (1969).

20-22-709. Labeling.

(a) No permissible articles of common fireworks defined in § 20-22-708 shall be sold, offered for sale, or possessed within the state, or used in the State of Arkansas, except as provided in § 20-22-702, unless it shall be properly named to conform to the nomenclature of § 20-22-708 and unless it shall be certified as "common fireworks" on all shipping cases and by imprinting on the article or retail container "I.C.C. Class C Common Fireworks". The imprint shall be of sufficient size and so positioned as to be readily recognized by law enforcement authorities and by the general public.

(b) Railway fusees are specifically excepted from this marking requirement.

History. Acts 1961, No. 224, § 2; A.S.A. 1947, § 82-1702.

20-22-710. Location, display, sale, etc.

(a) The placing, storing, locating, or displaying of fireworks in any window where the sun may shine through glass on to the fireworks so displayed or to permit the presence of lighted cigars, cigarettes, or pipes

within ten feet (10') of where the fireworks are offered for sale is declared unlawful and prohibited.

(b) At all places where fireworks are stored or sold, there shall be posted signs with the words "FIREWORKS — NO SMOKING" in letters not less than four inches (4") high.

(c) No fireworks are to be sold at retail at any location where paints, oils, or varnishes shall be kept for use or sale, unless the paints, oils, and varnishes are kept in the original unbroken containers, nor where resin, turpentine, gasoline, or other inflammable substance which may generate inflammable vapors is used, stored, or sold.

(d) All firework devices that are readily accessible to handling by a consumer or purchaser shall have their fuses protected in such a manner as to protect against accidental ignition of an item by spark, cigarette ash, or other ignition source. Safety type thread wrapped and coated fuses shall be exempt from this section.

(e) All licensees under this subchapter shall have a fire extinguisher of a type approved by the Director of the Department of Arkansas State Police in an area readily accessible to any point of storage or sale of fireworks. In lieu of such an extinguisher, retailers may maintain a common type of water hose, charged and connected to a water system, which is readily available to any area where fireworks are stored or sold.

History. Acts 1961, No. 224, § 4; 1985, No. 1041, § 1; A.S.A. 1947, § 82-1704.

20-22-711. Times of permissible sales.

(a) Permissible items of fireworks, defined in § 20-22-708, may be sold at retail to residents of the State of Arkansas and used within the State of Arkansas from June 20 through July 10 and December 10 through January 5 of each year only.

(b) As used in this section, "fireworks" shall not include toy pistols, toy canes, toy guns, or other devices in which paper caps containing twenty-five-hundredths grains (0.25 gr.) or less of explosive compounds are used, provided they are so constructed that the hand cannot come in contact with the cap when in place for exploding, and toy paper pistol caps which contain less than twenty-five-hundredths grains (0.25 gr.) of explosive compounds, cone, bottle, tube, or other type serpentine pop-off novelties, nonpoisonous toy snake, smoke sticks without report, and sparklers, the sale and use of which shall be permitted at all times.

History. Acts 1961, No. 224, § 3; A.S.A. 1947, § 82-1703.

20-22-712. Sales to certain people prohibited.

It shall be unlawful to offer for retail sale or to sell any fireworks to children under twelve (12) years of age or to any person known to be intoxicated or irresponsible.

History. Acts 1961, No. 224, § 5;
A.S.A. 1947, § 82-1705.

CASE NOTES

Cited: Arnold Fireworks Display, Inc. v. Schmidt, 307 Ark. 316, 820 S.W.2d 444 (1991).

20-22-713. Place of explosion or ignition.

(a) It shall be unlawful to explode or ignite fireworks within six hundred feet (600') of any church, hospital, asylum, public school, or within two hundred feet (200') of where fireworks are stored, sold, or offered for sale.

(b) No person shall ignite or discharge any permissible articles of fireworks within, or throw the fireworks from, a motor vehicle while therein, nor shall any person place or throw any ignited article of fireworks into or at a motor vehicle or at or near any person or group of people.

History. Acts 1961, No. 224, § 5;
A.S.A. 1947, § 82-1705.

CASE NOTES

Stopping of Vehicles.

Investigatory stop of vehicle held justi-

fied. Reeves v. State, 20 Ark. App. 17, 722 S.W.2d 880 (1987).

20-22-714. Seizure of contraband fireworks.

(a) The Director of the Department of Arkansas State Police shall seize as contraband any fireworks other than Class C common fireworks defined in § 20-22-708, or special fireworks for public displays as provided in § 20-22-702 or for agricultural or industrial purposes as provided in § 20-22-703, which are sold, displayed, used, or possessed in violation of this subchapter.

(b) The director may destroy fireworks so seized.

History. Acts 1961, No. 224, § 14;
1963, No. 34, § 2; A.S.A. 1947, § 82-1712.

20-22-715. Notice of violation — Hearing.

(a) With reference to the administrative and civil penalties imposed by this subchapter, the Director of the Department of Arkansas State Police shall notify the person accused of a violation, setting a time and place for hearing to be held by the director or his or her designated agent.

(b) If the hearing results in a revocation or refusal to renew a license of or the imposition of any civil penalty upon that person, the person adjudged guilty of the violation shall have a right to appeal the decision, for a trial de novo, to the Pulaski County Circuit Court.

History. Acts 1961, No. 224, § 11;
A.S.A. 1947, § 82-1711.

SUBCHAPTER 8 — FIRE PROTECTION SERVICES

SECTION.

- 20-22-801. Legislative findings.
- 20-22-802. Definitions.
- 20-22-803. Arkansas Fire Protection Services Board — Creation, membership, etc.
- 20-22-804. Arkansas Fire Protection Services Board — Duties and powers.
- 20-22-805. Office of Fire Protection Services — Creation.

SECTION.

- 20-22-806. Certification and classification of fire departments.
- 20-22-807. Authority of certified fire departments.
- 20-22-808. Limited immunity of certified fire departments.
- 20-22-809. Workers' compensation.
- 20-22-810. Legislative purpose and intent.
- 20-22-811. Training requirements.

Effective Dates. Acts 1993, No. 280, § 6: Feb. 26, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the current law with respect to the relationship between the Arkansas Fire Protection Services Board and the Office of Emergency Services and the authority and responsibility of each agency with respect to the Office of Fire Protection Services is unclear and in urgent need of clarification; that this act is designed to specifically prescribe the functions and duties of each of the agencies and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for

the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 1459, § 7: Apr. 16, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that fire protection services in this state are not being adequately addressed by the existing boards responsible for these services; that some fire protection services are being duplicated by the various boards; and that this act is immediately necessary because without proper services for our firefighters, their lives could be at risk. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

20-22-801. Legislative findings.

It is found and determined by the General Assembly that a system of certification and classification of fire departments should be established to encourage the improvement of the fire protection services in this state and to provide the people of this state with information about the level of service they are receiving. It is further found and determined that the public policy of this state should be to encourage individuals and organizations to provide fire protection services and that, to further this policy, workers' compensation coverage should be extended to volunteer firefighters of rural fire departments and that the civil liability of certified fire departments and their firefighters should be limited.

History. Acts 1987, No. 837, § 1.

20-22-802. Definitions.

As used in this subchapter:

- (1) "Board" means the Arkansas Fire Protection Services Board;
- (2) "Certified fire department" means any fire department certified by the Director of the Office of Fire Protection Services as meeting minimum standards prescribed by the Arkansas Fire Protection Services Board;
- (3) "Director" means the Director of the Office of Fire Protection Services;
- (4) "Fire department" means any organization established for the prevention or extinguishment of fires, including, but not limited to, fire departments organized under municipal or county ordinances, improvement districts, membership fee-based private fire departments, and volunteer fire departments; and
- (5) "Firefighter" means any paid or volunteer member of a fire department who engages in fire suppressions, rescue, pump operations, or other fire-ground activities.

History. Acts 1987, No. 837, § 2; 2003, No. 1396, § 1; 2003, No. 1459, § 1.

Amendments. The 2003 amendment by No. 1396 added "who engages in fire suppressions, rescue, pump operations, or other fire-ground activities" in (5).

The 2003 amendment by No. 1459 substituted "municipal or county ordinances, improvement districts, membership fee-based" for "improvement districts" in (4).

20-22-803. Arkansas Fire Protection Services Board — Creation, membership, etc.

- (a)(1) There is created the Arkansas Fire Protection Services Board.
- (2) The board shall be composed of fifteen (15) members to be appointed by the Governor as follows:
 - (A) Two (2) members shall be fire chiefs recommended by the Arkansas Association of Fire Chiefs;

(B) Four (4) members shall be recommended by the Rural and Volunteer Firefighters Association;

(C) Four (4) members recommended by the Arkansas State Firefighters Association, two (2) of which shall be volunteer firefighters and two (2) of which shall be career firefighters;

(D) Two (2) members shall be recommended by the Arkansas Professional Firefighters Association;

(E) One (1) member shall be in a retired status and shall be recommended by the board;

(F) The Director of the Arkansas Department of Emergency Management; and

(G) The Director of the Arkansas Fire Training Academy.

(3) A representative of the Arkansas Forestry Commission shall be an ex officio member.

(4)(A) The initial members appointed under subdivision (a)(2) of this section shall determine their terms of office by drawing lots which result in four (4) members serving one-year terms, four (4) members serving two-year terms, and five (5) members serving three-year terms.

(B) Successor appointed members shall serve three-year terms.

(5) Each member shall hold office until his or her successor is appointed and qualified.

(6) Each recommending organization shall submit a minimum of three (3) names for consideration for appointment by the Governor for each position vacancy on the board.

(b)(1) The board shall elect annually a chair, vice chair, and secretary.

(2) The board shall meet at the call of the chair or a majority of the members.

(3) A majority of the members shall constitute a quorum.

(c) The Governor shall fill vacancies occurring on the board with appointments for the duration of the unexpired terms.

(d) The members shall serve without pay but may receive expense reimbursement in accordance with § 25-16-901 et seq.

History. Acts 1987, No. 837, § 3; 1997, No. 250, § 195; 2003, No. 1459, § 2.

Publisher's Notes. Acts 1987, No. 837, § 3, provided, in part, that the initial board members should serve such terms, to be decided by lot, as necessary to result in the terms of three members expiring each year.

As amended by Acts 2003, No. 1459, subsection (a) began: "(a)(1) There is created the Arkansas Fire Protection Services Board.

"(2)(A) The terms of office of members serving on February 28, 2003, expire on March 1, 2003.

"(B) The members of the Arkansas Fire

Advisory Board serving on February 28, 2003, shall constitute the board of the Arkansas Fire Protection Services Board as of March 1, 2003, and shall serve as such until July 1, 2003, at which time appointments shall be made under subdivision (a)(3) of this section.

"(3) Beginning July 1, 2003,"

Amendments. The 2003 amendment deleted the last sentence in (a)(1); deleted former (a)(1)(A)-(E) and (a)(2); inserted present (a)(2)-(5); redesignated former (a)(3) as present (a)(6); inserted "or her" in present (a)(6); added (a)(7); substituted "chair, vice chair, and secretary" for "chairman" in (b)(1); made stylistic

changes in (b)(1) and (2); and substituted “terms” for “term” in (c).

Cross References. Arkansas Fire Advisory Board, § 20-22-1005.

20-22-804. Arkansas Fire Protection Services Board — Duties and powers.

(a) The Arkansas Fire Protection Services Board shall:

(1) Prescribe by regulation minimum standards for the certification of fire departments and standards for the classification of fire departments as to their level of service, including, but not limited to, standards for training levels for firefighters of fire departments, minimum levels of equipment, and minimum performance standards;

(2) Establish a system of identification for firefighters of certified fire departments for the purpose of assisting firefighters to carry out their duties;

(3) Assist fire departments with training programs and assist with the establishment and upgrading of fire departments;

(4) Promote the exchange of information among fire departments and state agencies;

(5) Serve in an advisory capacity to the Director of the Arkansas Department of Emergency Management with respect to the operation of fire services and the matters concerning certification and standards related to fire services in the state;

(6) Periodically review and evaluate current and proposed national and international activities related to the improvement and upgrading of fire services to ensure that the state maintains acceptable standards of fire protection for its citizens and standards for training its firefighters;

(7) Advise the Director of the Arkansas Fire Training Academy in matters related to the training and certification of fire services personnel in Arkansas and curriculum and instructional content of the curriculum offered by the Arkansas Fire Training Academy;

(8) Advise the Chancellor of SAU-Tech in matters regarding the appointment and retention of the director of the academy; and

(9) Establish other reasonable rules and regulations as may be necessary for the purposes of this subchapter.

(b) As of March 1, 2003, the Arkansas Fire Training Academy Board created by § 12-13-202 [repealed] and the Arkansas Fire Advisory Board created by § 20-22-1005 [repealed] are transferred by a Type 3 transfer under § 25-2-106 to the Arkansas Fire Protection Services Board created by § 20-22-803.

History. Acts 1987, No. 837, § 3; 1993, No. 280, § 1; 1999, No. 646, § 58; 2003, No. 1459, § 3.

Publisher’s Notes. Acts 1999, No. 646, § 1, provided: “The State Office of Emergency Services shall hereafter be known as the Arkansas Department of Emergency Management. Any provisions of the

Arkansas Code not corrected by this act shall be corrected by the Arkansas Code Revision Commission to reflect the title ‘Arkansas Department of Emergency Management’ instead of ‘State Office of Emergency Services’ or any similar titles that now apply to the State Office of Emergency Services.”

Amendments. The 2003 amendment substituted "fire services and the matters concerning certification and standards related to fire services in the state" for "The Office of Fire Protection Services; and" in

(a)(5); inserted present (a)(6)-(8); redesignated former (a)(6) as (a)(9); made stylistic changes in (a)(1)-(3) and (9); and added (b).

20-22-805. Office of Fire Protection Services — Creation.

(a) There is created the Office of Fire Protection Services which shall be under the supervision and direction of the Director of the Arkansas Department of Emergency Management.

(b) The Director of the Office of Fire Protection Services, who shall be employed by the Director of the Arkansas Department of Emergency Management, shall have the responsibility to carry out the administrative functions and directives of the Arkansas Fire Protection Services Board.

(c) The Director of the Office of Fire Protection Services may employ personnel as may be authorized by law to carry out the duties of the office.

History. Acts 1987, No. 837, § 4; 1993, No. 280, § 2; 1999, No. 646, § 59.

A.C.R.C. Notes. As to the Arkansas Department of Emergency Management superseding the Office of Fire Protection Services and the State Office of Hazardous Materials, see § 12-75-109.

Publisher's Notes. Acts 1999, No. 646, § 1, provided: "The State Office of Emergency Services shall hereafter be known

as the Arkansas Department of Emergency Management. Any provisions of the Arkansas Code not corrected by this act shall be corrected by the Arkansas Code Revision Commission to reflect the title 'Arkansas Department of Emergency Management' instead of 'State Office of Emergency Services' or any similar titles that now apply to the State Office of Emergency Services."

20-22-806. Certification and classification of fire departments.

(a) Fire departments in this state may apply for annual certification and classification by the Director of the Office of Fire Protection Services. Each fire department applying for certification shall submit such information as may be required by the director to determine whether the fire department meets minimum certification standards and to classify the department as to its level of service.

(b)(1) Until the Arkansas Fire Protection Services Board adopts certification standards, any fire department shall be entitled to certification upon registering with the board.

(2) Certification under this subsection shall be effective until six (6) months after the adoption of the certification standards by the board.

(c) Firefighters shall maintain a minimum of six (6) hours per quarter and at least a minimum of twenty-four (24) hours per year of certifiable training meeting the standards of the Arkansas Fire Training Academy.

History. Acts 1987, No. 837, § 5.

20-22-807. Authority of certified fire departments.

Certified fire departments and their firefighters shall have the authority to do all acts reasonably necessary to extinguish fires and protect life and property from fire.

History. Acts 1987, No. 837, § 6.

20-22-808. Limited immunity of certified fire departments.

(a) Any certified fire department that does not have tort immunity as provided by state law shall be subject to limited liability as provided in this section.

(b) Certified fire departments entitled to limited immunity under this section shall not be liable for damages to persons or property resulting from an act or omission of the fire department or the firefighter occurring at the scene of a reported fire and related to the suppression of the reported fire if the act or omission did not constitute gross negligence, wanton conduct, or intentional wrongdoing.

History. Acts 1987, No. 837, § 7.

20-22-809. Workers' compensation.

(a) For the purpose of workers' compensation coverage in cases of injury to or death of an individual, volunteer firefighters of certified fire departments, other than municipal fire departments, who meet the requirements of this section shall be deemed county employees and shall receive minimum compensation. Their survivors shall receive death benefits in the same manner as regular county employees for injury or death arising out of and in the course of their activities as firefighters.

(b) Volunteer firefighters requesting workers' compensation coverage shall annually file with the county clerk evidence that:

(1) The firefighter has met the minimum training standards recommended by the Arkansas Fire Protection Services Board; and

(2) The volunteer firefighter is a member of a certified fire department other than a municipal fire department.

History. Acts 1987, No. 837, § 8.

20-22-810. Legislative purpose and intent.

(a) The General Assembly finds that:

(1) The specialized and hazardous nature of firefighting requires that firefighters possess the requisite knowledge and demonstrate the ability to perform certain skills to carry out their responsibilities; and

(2) The activities of firefighters are important to the health, safety, and welfare of the people of this state.

(b) It is the intent of the General Assembly to require minimum standards for training for entry level, full-time firefighters.

History. Acts 2003, No. 1396, § 2.

20-22-811. Training requirements.

(a)(1) After January 1, 2004, no person shall be hired as a full-time firefighter by any local government firefighting unit for a period exceeding one (1) year or for a cumulative time exceeding two thousand nine hundred twelve (2,912) compensated hours unless that person is certified as having completed the mandatory training requirements in subsection (c) of this section.

(2) Any state agency or political subdivision that employs a person as a firefighter for a period exceeding one (1) year or for a cumulative time exceeding two thousand nine hundred twelve (2,912) compensated hours who does not meet the requirements of subsection (c) of this section is prohibited from performing the duties of fire suppression, rescue, pump operations, or other fire ground activities as described in § 20-22-802(5).

(3) The Arkansas Fire Advisory Board may grant an extension to individuals employed within the guidelines as established by the board.

(b) Firefighters serving as full-time employees before January 1, 2004, in a local firefighting unit shall not be required to meet the minimum requirements in subsection (c) of this section.

(c)(1) The uniform training standards for entry level, full-time firefighters shall consist of satisfactory completion of a training program administered by the Arkansas Fire Training Academy which shall utilize the "National Fire Protection Association 1001: Standard for Fire Service Professional Qualifications".

(2) The academy shall be the certifying agency for fire service personnel.

(3) Any person seeking employment from another state shall submit his or her certification to the academy for review and approval.

History. Acts 2003, No. 1396, § 2.

Publisher's Notes. The Arkansas Fire Advisory Board, referred to in subdivision

(a)(3), has been transferred to the Arkansas Fire Protection Services Board as provided in § 20-22-804(b).

SUBCHAPTER 9 — VOLUNTEER FIRE DEPARTMENTS

SECTION.

- 20-22-901. Duty to respond to fires.
 20-22-902. Fire on nonmember's property
 — Reimbursement from
 insurance proceeds.
 20-22-903. Authority of Arkansas For-
 estry Commission not af-
 fected.

SECTION.

- 20-22-904. Lien on uninsured nonmem-
 ber's property.
 20-22-905. Filing and enforcement of
 lien.
 20-22-906. Attorney's fee.

20-22-901. Duty to respond to fires.

(a)(1) Upon receipt of a report of an uncontrolled fire or a 911 or other emergency call reporting a fire, it shall be the duty of volunteer fire departments operating within the State of Arkansas to respond to,

attempt to control, and put out all fires occurring within their respective districts involving any real or personal property, whether that property is owned by members of the fire district.

(2) However, unless the following circumstances exist, the volunteer fire department shall have no duty or authority to respond to or attempt to control and put out any fire which occurs on forest lands, cut-over lands, brush lands, or grasslands owned by a nonmember:

(A) The fire poses an immediate threat to life of any person;

(B) There is a written agreement between a nonmember owner of the real or personal property and the volunteer fire department requiring the fire department to respond;

(C) The fire is in violation of a countywide fire ban; or

(D) The fire poses an immediate threat to the real or personal property owned by a member of the district.

(b)(1) If the property is owned by a nonmember of the fire district, then the volunteer fire department shall be entitled to recover from the nonmember property owner the reasonable value of its services not to exceed the fair market value of the services rendered.

(2) A claim for services in responding to a fire involving only personal property shall be allowed only for personal property of nonmembers, and the claimed amount shall not exceed three hundred dollars (\$300).

History. Acts 1987, No. 836, § 1; 1997, No. 1150, § 1; 2003, No. 655, § 1.

deleted “or by nonmembers” following “members” in (a)(1); and rewrote (a)(2).

Amendments. The 2003 amendment

RESEARCH REFERENCES

Ark. L. Rev. Waggoner v. Troutman Oil Company — Arkansas Adopts the Fire-

man’s Rule: Do Volunteer Firefighters Get Burned Twice?, 50 Ark. L. Rev. 363.

CASE NOTES

Fireman’s Rule.

The Firemen’s Rule (also known as the professional rescuer doctrine) generally provides that a professional firefighter may not recover damages from a private party for injuries the fireman sustained during the course of putting out a fire even though the private party’s negligence may have caused the fire and injury; while Arkansas has previously neither adopted

nor rejected the Fireman’s Rule, the rule was found applicable in this case. Waggoner v. Troutman Oil Co., 320 Ark. 56, 894 S.W.2d 913 (1995).

The duty (or lack thereof) owed to volunteer firefighters under the Fireman’s Rule is no different from that owed to paid firefighters. Waggoner v. Troutman Oil Co., 320 Ark. 56, 894 S.W.2d 913 (1995).

20-22-902. Fire on nonmember’s property — Reimbursement from insurance proceeds.

When a volunteer fire department responds to a fire occurring or responds to a 911 or other fire emergency call within its district and the property which is the subject of the alarm is owned by a nonmember and insured in case of any damage resulting from a fire, the insurance company insuring the property against loss shall pay to the volunteer

fire department the reasonable cost of its services from the insurance proceeds. The insurance company shall obtain a written and signed release from the fire chief of the volunteer fire department prior to disbursing the remaining proceeds to any other person, financial institution, company, or corporation which has a legal interest in the proceeds.

History. Acts 1987, No. 836, § 2; 1997, No. 1150, § 2.

Publisher's Notes. Acts 1987, No. 836, § 2, is also codified as § 23-88-102.

20-22-903. Authority of Arkansas Forestry Commission not affected.

This subchapter and § 23-88-102 shall in no way modify or limit the existing authority of the Arkansas Forestry Commission, nor shall it be construed as repealing any law applicable to the commission.

History. Acts 1987, No. 836, § 4.

20-22-904. Lien on uninsured nonmember's property.

(a) If the property which is the subject of the alarm is owned by a nonmember and is not insured and if the volunteer fire department has not been paid for the services rendered, then the volunteer fire department shall have an absolute lien on the real and personal property which is the subject of the alarm for the work and labor performed in responding to or fighting the fire to secure the payment of the work and labor performed.

(b) The lien on real property shall attach to the real estate upon which the property is located and all improvements thereon.

(c) The lien on personalty shall attach to all personal property owned by the nonmember located within the county in which the alarm occurred.

History. Acts 1987, No. 836, § 3; 1997, No. 1150, § 3.

20-22-905. Filing and enforcement of lien.

(a) The volunteer fire department shall give ten (10) days' notice before the filing of the lien to the owner or agent that it holds a claim against the property setting forth the amount and from whom it is due. The notice may be served by any officer authorized by law to serve process in civil actions. When served by an officer, his or her official return endorsed on it shall be proof of service.

(b) Whenever property is sought to be charged with a lien under this subchapter and § 23-88-102 and the owner is not a resident of this state, or conceals himself or herself or absents himself or herself from his or her usual place of abode so that the required notice cannot be served upon him or her, the notice may be filed with the clerk of the circuit court of the county in which the property to be charged with the

lien is located. When filed, the lien shall have like effect as if served upon the owner or his or her agent and shall be received in all courts of this state as evidence of the service of the notice.

(c) The volunteer fire department shall file with the clerk of the circuit court of the county in which the property to be charged with the lien is located, and within one hundred twenty (120) days after the work and labor have been furnished and performed, a just and true account of the amount due and owing, after allowing all credits, and containing a correct description of the property to be charged with the lien, verified by affidavit.

(d) All liens created by this subchapter and § 23-88-102 shall be enforced in the circuit court of the county wherein the property on which the lien is attached is located.

(e) All actions under this subchapter and § 23-88-102 shall be commenced within fifteen (15) months after the filing of the lien. No lien shall continue to exist by virtue of the provisions of this subchapter and § 23-88-102 for more than fifteen (15) months after the lien shall be filed, unless within that time an action shall be instituted thereon.

(f) The pleadings, practice, process, and other proceedings shall be the same as in ordinary civil actions and proceedings in circuit courts. The petition shall allege the facts necessary for securing a lien under this subchapter and § 23-88-102 together with a complete description of the property on which the lien is attached.

History. Acts 1987, No. 836, § 3.

20-22-906. Attorney's fee.

When any volunteer fire department gives notice thereof to the nonmember owner of the property of the costs and expenses of responding to, suppressing, controlling or attempting to suppress and control the fire and when the invoice is not paid within ninety (90) days, as provided for in this subchapter or under § 23-88-102, if the volunteer fire department is required to sue for the enforcement of its claim, the court shall allow the volunteer fire department a reasonable attorney's fee in addition to other relief to which it may be entitled.

History. Acts 1997, No. 1150, § 4.

SUBCHAPTER 10 — ARKANSAS COMPREHENSIVE FIRE PROTECTION ACT OF 1993

SECTION.

20-22-1001. Title.

20-22-1002. Policy and purpose.

20-22-1003. Definitions.

SECTION.

20-22-1004. Office of Fire Protection Services.

20-22-1005. [Repealed.]

SECTION.

20-22-1006. Arkansas Fire Protection Services Resources Plan.

20-22-1007. State and local government agencies — Liaison officers.

SECTION.

20-22-1008. Utilization of existing services and facilities.

Effective Dates. Acts 1993, No. 1303, § 12: Apr. 23, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly of the State of Arkansas that the Office of Fire Protection Services needs to coordinate the current state functions related to fire prevention, training and management to more effectively and economically use existing personnel, equipment, facilities and resources; that a fire services management system which is responsive to local government for current and future fire services needs to be related to continued population and economic growth; that the State of Arkansas needs to develop and formulate a comprehensive plan for the orderly management and development of fire protection service resources of the State of Arkansas and its local governments; and that this act is designed to accomplish these functions and should be given effect immediately. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the

public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 2003, No. 1459, § 7: Apr. 16, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that fire protection services in this state are not being adequately addressed by the existing boards responsible for these services; that some fire protection services are being duplicated by the various boards; and that this act is immediately necessary because without proper services for our firefighters, their lives could be at risk. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

20-22-1001. Title.

This subchapter may be cited as the "Arkansas Comprehensive Fire Protection Act of 1993".

History. Acts 1993, No. 1303, § 1.

20-22-1002. Policy and purpose.

Because of the existing and increasing occurrence of fires that damage and destroy the public and private property of the citizens of Arkansas and because of the increase in population and structures that form the residences, businesses, and institutions of this state and its business, industrial, and environmental resources and threaten the safety, health, and welfare of its citizens, it is found and declared to be necessary:

(1) To facilitate the cooperation and efficient coordination of the current state functions related to fire prevention, training, and man-

agement through the Office of Fire Protection Services for more effective and economical use of existing personnel, equipment, facilities, and resources;

(2) To provide a fire services management system to be responsive to local government for current and future fire services needs related to continued population and economic growth;

(3) To direct the designation of fire protection services liaisons within each affected state department or agency and each local government; and

(4) To prepare, develop, formulate, and engage in a comprehensive program for the orderly coordination, cooperation, and development of fire protection services resources of the State of Arkansas and its local governments, to be referred to as the "Arkansas Fire Protection Services Resources Plan".

History. Acts 1993, No. 1303, § 2.

20-22-1003. Definitions.

As used in this subchapter:

(1) "Adjunct services" refers to those activities related to, or performed by, a fire services agency, such as hazardous and toxic materials response and recovery, search and rescue, and such other functions as may be assigned to or reasonably expected of a local fire services agency;

(2) "Fire mitigation" means, but is not limited to, those activities designed to lessen the impact of fire upon structures, persons, or the natural environment;

(3) "Fire prevention" means, but is not limited to, those actions taken directly or indirectly by an entity of state, county, or municipal government to prevent the occurrence of fire, whether the result of accident or through arson;

(4) "Fire services" means those functions of firefighting, fire prevention, fire mitigation, fire training, and fire administration performed by rural or municipal, volunteer or paid professional firefighters and fire departments created in accordance with the laws of the State of Arkansas;

(5) "Fire training" refers to those teaching, educational, or training activities conducted to improve the ability of an individual or a fire department to contain, suppress, or otherwise reduce the danger incurred from fire and includes not only technical training on the use of equipment and resources for fire suppression but also those administrative, training, fiscal, and other programs designed to enhance an individual's or a fire department's ability to perform his or her or its assigned duties; and

(6) "Local government" means a county, city of the first class, city of the second class, or an incorporated town, a fire protection district, a subordinate services district of a county, an improvement district organized to provide fire services, or any other fire department created in accordance with the laws of the State of Arkansas.

History. Acts 1993, No. 1303, § 3.

20-22-1004. Office of Fire Protection Services.

(a) The Office of Fire Protection Services shall have the following duties and functions:

(1) To be responsible for carrying out the administrative functions and directives of the Arkansas Fire Protection Services Board and for managing those activities prescribed for the board under § 14-284-401 et seq.;

(2) To act as coordinator of the activities for the programs and functions prescribed under this subchapter;

(3) To act as the point of contact for the State of Arkansas concerning federal, state, and local fire services-related programs;

(4) To advise and direct the designation of fire services liaisons within each affected state department or agency and each local government;

(5) To prepare, publish, and keep current a listing of the various fire services agencies of the state and its local governments and the firefighting, prevention, training, mitigation, and adjunct services they are trained and equipped to perform; and

(6) To facilitate and coordinate the preparation, formulation, and development of the Arkansas Fire Protection Services Resources Plan, a comprehensive plan for the orderly coordination, cooperation, and development of fire services resources of the State of Arkansas and its local governments.

(b)(1) The office shall have those professional, technical, secretarial, and administrative employees as may be necessary to carry out the functions of this subchapter.

(2) The office may make the expenditures within the appropriation therefor made available to it from whatever sources for the purpose of fire services coordination as may be necessary to carry out the functions of this subchapter.

(c) The office shall coordinate the activities prescribed under this subchapter and shall cooperate with and receive cooperation from the following fire services agencies of the State of Arkansas:

(1) The State Fire Marshal, who is responsible for providing the services and functions related to the investigation of arson and enforcement of arson laws, fire safety, public awareness, and other functions as may be specified by law for the office;

(2) The Arkansas Fire Training Academy, which shall provide fire services and adjunct training and education services as are required to ensure the maximum possible professionalism and competence of firefighters in Arkansas; and

(3) The Rural Fire Protection Service of the Arkansas Forestry Commission, which shall provide refurbished and repaired vehicles and other equipment for firefighting operations and which provides technical assistance and guidance to rural fire protection districts.

(d) All state agencies involved in fire services, including the State Fire Marshal, the Arkansas Fire Training Academy, and the Rural Fire

Protection Service, and all fire services agencies of local governments shall cooperate to the fullest extent possible with the office in the performance of their duties and functions under this subchapter.

History. Acts 1993, No. 1303, § 4.

20-22-1005. [Repealed.]

Publisher's Notes. This section, concerning the Arkansas Fire Advisory Board, was repealed by Acts 2003, No. 1459, § 6. The section was derived from Acts 1993, No. 1303, § 5; 1999, No. 646, §§ 60, 61.

20-22-1006. Arkansas Fire Protection Services Resources Plan.

(a) The Office of Fire Protection Services shall facilitate and coordinate, with the cooperation and assistance of the fire services agencies listed in § 20-22-1004(c), the development and formulation of a comprehensive program for the orderly coordination, cooperation, and development of resources of the State of Arkansas and its local governments, to be referred to as the "Arkansas Fire Protection Services Resources Plan". The plan shall include plans:

(1) For providing fire services in the various rural areas of this state which do not have available the benefits or services of an organized or voluntary firefighting program;

(2) For updating and improving fire services in urban, suburban, and rural areas which have fire services but which need improvements and for assisting existing organized or volunteer firefighting services in making those improvements;

(3) On the type, needs, and means to procure firefighting vehicles and equipment for fire services agencies of local governments;

(4) On developing training programs designed to instruct and train firefighters at the Arkansas Fire Training Academy to be employed or used by both urban and rural organized and volunteer fire services agencies;

(5) To coordinate the efforts of all state and local government fire services agencies for the purpose of making maximum use of the services and resources for the prevention and mitigation of injury and damage caused by fire and other hazards;

(6) To measure the prompt and effective response to fires and other hazards and disasters;

(7) To identify areas particularly vulnerable to fire and hazards and other disasters; and

(8) To make recommendations for improvements in the firefighting, prevention, training, mitigation, and adjunct services for state and local fire services agencies.

(b) In coordinating the preparation and revision of the plan, the office shall seek the advice and assistance of and cooperate with state agencies, including the State Fire Marshal, the Arkansas Fire Training Academy, and the Rural Fire Protection Service, with all fire services

agencies of local governments, with business, labor, industry, agriculture, civic and volunteer organizations, and with community leaders.

(c) The plan or any part thereof may be incorporated into regulations of the office, the Arkansas Department of Emergency Management, or executive orders which have the force and effect of law.

History. Acts 1993, No. 1303, § 6;
1999, No. 646, § 62.

20-22-1007. State and local government agencies — Liaison officers.

(a) It is directed by this subchapter that the head of each state agency with fire services, including the State Fire Marshal, the Arkansas Fire Training Academy, and the Rural Fire Protection Service, and all fire services agencies of local governments shall appoint a member or members of its staff as fire services liaison officer or officers to act on its behalf in coordinating and ensuring the agency's capability to fulfill its role in fire services activities.

(b) It shall be the responsibility of this officer or these officers to:

(1) Maintain close and continuous liaison with the Office of Fire Protection Services, as applicable;

(2) Prepare agency operations plans in cooperation with this subchapter and with the office;

(3) Submit a list of the various firefighting, prevention, training, mitigation, and adjunct services the agency is trained and equipped to perform;

(4) Maintain files of agency resources to include personnel, facilities, and equipment available for fire services and adjunct services operations;

(5) Submit a semiannual report to the office of the various firefighting, prevention, training, mitigation, and adjunct services the agency is trained and equipped to perform;

(6) Ensure that the agency can respond promptly and cooperatively with other agencies in any firefighting situations or major emergency situations under the procedures cooperatively agreed to in the Arkansas Fire Protection Services Resources Plan and coordinated by the office; and

(7) Perform other related functions necessary to carry out the purpose of this subchapter.

(c) Nothing in subsections (a) and (b) of this section shall be interpreted as relieving or otherwise abridging the responsibility and authority of any state or local agency directors in carrying out the fire services and adjunct services operations for which their agencies are solely responsible.

History. Acts 1993, No. 1303, § 7.

20-22-1008. Utilization of existing services and facilities.

All fire services agencies of the state, including the State Fire Marshal, the Arkansas Fire Training Academy, and the Rural Fire Protection Service, and all fire services agencies of local governments, to the maximum extent practicable, shall utilize services, facilities, equipment, and personnel of their existing departments, offices, and agencies to carry out the provisions of this subchapter.

History. Acts 1993, No. 1303, § 8.

CHAPTER 23 BOILER SAFETY

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ADMINISTRATION.
3. CERTIFICATION OF BOILERS.
4. CERTIFICATION OF INSPECTORS, OPERATORS, ETC.

RESEARCH REFERENCES

ALR. Products liability: defective heating equipment. 1 ALR 4th 748.

Sufficiency of evidence to support product misuse defense in actions concerning

commercial or industrial equipment and machinery. 64 ALR 4th 10.

Am. Jur. 31A Am. Jur. 2d, Explos., § 159.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 20-23-101. Definitions.
20-23-102. Exceptions.
20-23-103. Enforcement.

SECTION.

- 20-23-104. Periodic or regular attendance.
20-23-105. Disposition of funds.

Effective Dates. Acts 1961, No. 494, § 12: Mar 17, 1961. Emergency clause provided: "It has been found and is declared by the General Assembly of the State of Arkansas that the existing laws are inadequate to protect the public from the dangers inherent in the sale, installation, repair and operation of steam boilers and/or unfired pressure vessels and there is urgent need for the strengthening of the laws in this connection — therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force and effect from and after its passage and approval."

Acts 1970 (Ex. Sess.), No. 65, § 4: Mar. 13, 1970. Emergency clause provided: "It is hereby found and determined by the General Assembly that the fees presently prescribed by law for the inspection of boilers are inadequate to provide necessary funds for this essential function and that this Act is immediately necessary to increase boiler inspection fees to correct this situation. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 162, § 5: Feb. 12, 1975.

Emergency clause provided: "It is hereby found and determined by the General Assembly that the fees presently prescribed by law for the inspection of boilers are inadequate to provide necessary funds for this essential function and that this Act is immediately necessary to increase boiler inspection fees to correct this situation. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1977, No. 404, § 2: Mar. 11, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the fees presently prescribed by law for the inspection of boilers are inadequate to provide necessary funds for this essential function and that this Act is immediately necessary to increase boiler inspection fees to correct this situation. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 526, § 5: Mar. 22, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that the fees presently prescribed by law for the inspection of boilers are inadequate to provide necessary funds for this essential function and that this Act is immediately necessary to increase boiler inspection fees to correct this situation. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 9, § 5: Feb. 2, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the fees presently prescribed by law for the inspection of boilers are inadequate to provide necessary funds for this essential function and that this Act is immediately necessary to increase boiler inspection fees to correct this situation. Therefore, an emergency is hereby de-

clared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 303, § 5: Mar. 2, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the fees presently prescribed by law for the inspection of boilers are inadequate to provide necessary funds for this essential function and that this Act is immediately necessary to increase boiler inspection fees to correct this situation. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 67, § 3: Feb. 8, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law requiring boilers to be inspected hourly is obsolete in light of modern technology which allows mechanical or electronic devices to monitor boilers; that the present law is resulting in unnecessary expense to the taxpayers of this state and that this Act is immediately necessary to provide relief to the taxpayers. Therefore an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 477, § 10: January 1, 1994.

Acts 2001, No. 577, § 8: July 1, 2001. Emergency clause provided: "It is hereby found and determined by the Eighty-third General Assembly that this act must go into effect on the date the biennial appropriation for the Department of Labor goes into effect, which is July 1, 2001, and that the delay in the effective date of this act could work irreparable harm upon the proper administration and provisions of essential government programs. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2001."

20-23-101. Definitions.

As used in this chapter:

(1) "Boiler" or "boilers" means any boiler or like vessel or container in which water is heated or steam is generated by the application of heat and includes:

(A) Steam boilers that generate steam under pressure and includes:

(i) High pressure steam boilers that generate steam under pressure more than fifteen pounds per square inch gauge (15 psig); and

(ii) Low pressure steam heating boilers that generate steam at fifteen pounds per square inch gauge (15 psig) or less for heating purposes;

(B) Hot water heating boilers that heat water for the external use of heating any area or building; and

(C) Hot water heaters that are used for heating water for external use;

(2) "Horsepower" means the evaporation of thirty-four and one-half pounds (34.5 lbs.) of water from a temperature of two hundred twelve degrees Fahrenheit (212° F) into steam at two hundred twelve degrees Fahrenheit (212° F) at fourteen and seven-tenths pounds per square inch absolute (14.7 psia);

(3) "Internal" and "external" inspection means a thorough and proper inspection as provided for in the rules and regulations by the Boiler Advisory Board;

(4)(A) "Pressure piping" means power piping systems and their component parts within or forming a part of the pressure piping system connected to any boiler or unfired pressure vessel covered by the provisions of this chapter.

(B) This includes only boiler external piping for power boilers and high-temperature, high pressure water boilers in which:

(i) Steam or vapor is generated at a pressure of more than fifteen pounds per square inch gauge (15 psig); and

(ii) High-temperature water is generated at pressures exceeding one hundred sixty pounds per square inch gauge (160 psig) and temperatures exceeding two hundred fifty degrees Fahrenheit (250° F) or one hundred twenty degrees Centigrade (120° C), or both.

(C) Boiler external piping shall be considered as that piping which begins where the boiler proper terminates at:

(i) The first circumferential joint for welding end connections;

(ii) The face of the first flange in bolted flanged connections; or

(iii) The first threaded joint in that type of connection and which extends up to and includes the valve or valves required by regulation;

(5) "Pressure vessel" means any unfired pressure vessel constructed for the accumulation, storage, or transportation of air, liquids, or gases that are under induced pressure; and

(6) "PSIG" means pounds per square inch gauge pressure.

History. Acts 1961, No. 494, § 9; A.S.A. 1947, § 81-509; Acts 1993, No. 477, § 1; 1999, No. 982, § 1; 2005, No. 1012, § 1.

Amendments. The 2005 amendment rewrote (1); and inserted "constructed for ... induced pressure" in (5).

20-23-102. Exceptions.

(a) The provisions of this chapter shall not apply to:

(1) Inspection and installation permit requirements on air storage vessels located in service stations and garages;

(2) Air tanks of twelve gallons (12 gals.) or less containing one hundred fifty pounds per square inch (150 psi) or less;

(3) Boilers and unfired pressure vessels which are under the inspection regulations of the Interstate Commerce Commission;

(4) Boilers and unfired pressure vessels used for domestic purposes in private residences and apartment houses of eight (8) or fewer apartments;

(5) Unfired pressure vessels, other than air tanks or vessels listed in subdivisions (a)(1)-(4) of this section, where the maximum allowable working pressure is fifteen pounds per square inch (15 psi) or less or a volume of five cubic feet (5 cu. ft.) or less, to coil-type steam generators without accumulative drum, or to vessels used in connection with or the storage of liquefied petroleum gases. However, all such unfired pressure vessels shall be constructed in compliance with the appropriate regulations applicable thereto;

(6) Hot water heaters under two hundred thousand british thermal units (200,000 btu), except those heaters located in hospitals, schools, day care centers, and nursing homes;

(7) Hot water supply storage tanks which are heated by steam or any other direct or indirect means when heat input is less than two hundred thousand british thermal units per hour (200,000 btu/hr.), when water temperature is less than two hundred ten degrees Fahrenheit (210° F), and when the vessel has nominal water-containing capacity of less than one hundred twenty gallons (120 gals.);

(8)(A) Pressure vessels which are an integral part of components of rotating or reciprocating mechanical devices and hydraulic or pneumatic cylinders where the primary design considerations and stress are derived from the functional requirements of the device; or

(B) Pressure vessels which are an integral part of the structure and have a primary function of transporting fluids from one (1) location to another within a system; and

(9) Vessels with a nominal water-containing capacity of one hundred twenty gallons (120 gals.) or less for containing water under pressure, including those containing air, the compression of which serves only as a cushion.

(b) This chapter shall not apply to inspection, installation permit requirements, or regulation of boilers and unfired pressure vessels used in connection with the production, distribution, storage, or transmission of oil, natural gas, or casinghead gas.

History. Acts 1961, No. 494, § 9; 1963, No. 100, § 1; 1965, No. 549, § 1; 1983, No. 516, § 1; A.S.A. 1947, § 81-509; Acts 1999, No. 982, § 2.

A.C.R.C. Notes. The Interstate Commerce Commission, referred to in this

section, was abolished by the Interstate Commerce Commission Termination Act of 1995, Pub. L. No. 104-88. The successor agency to the Interstate Commerce Commission is the Surface Transportation Board.

20-23-103. Enforcement.

(a) The criminal penalties provided by this chapter shall be enforced by the prosecuting attorney of each judicial district. The administrative penalties provided by this chapter shall be imposed pursuant to regulation of the Director of the Department of Labor.

(b) The director may collect an administrative penalty imposed pursuant to this chapter in a civil action in a court of competent jurisdiction, and he or she shall not be required to pay costs or to enter a bond for payment of costs.

History. Acts 1961, No. 494, § 6; 1970 § 3; 1981, No. 9, § 3; 1983, No. 303, § 3; (Ex. Sess.), No. 65, § 2; 1975, No. 162, A.S.A. 1947, § 81-506; Acts 1999, No. 982, § 3; 1977, No. 404, § 1; 1979, No. 526, § 3.

20-23-104. Periodic or regular attendance.

(a) All boilers subject to the provisions of this chapter shall be continuously monitored by mechanical and electronic devices approved by the Director of the Department of Labor. When a plant is in operation or when any public building is occupied, the boilers shall be under regular attendance by a boiler operator unless otherwise exempt.

(b) Boilers that are manually operated shall be under constant attendance whenever they are in use for any purpose.

(c) All steam boilers fifty horsepower (50 hp.) and over, as rated by the manufacturer in any location, and steam boilers used in hospitals, hotels, schools, theatres, and office buildings, but not limited to these places, shall be under regular attendance by a licensed operator who holds a certificate of competency issued by the Boiler Inspection Division.

History. Acts 1961, No. 494, § 7; 1970 1983, No. 303, § 4; 1985, No. 67, § 1; (Ex. Sess.), No. 65, § 3; 1975, No. 162, A.S.A. 1947, § 81-507; Acts 1999, No. 982, § 4; 1979, No. 526, § 4; 1981, No. 9, § 4; § 4.

20-23-105. Disposition of funds.

(a) All money received under this chapter shall be paid to the Treasurer of State, who shall place this money to the credit of the Department of Labor Special Fund, there to be used by the Department of Labor in carrying out the functions, powers, and duties as set out in this chapter and to defray the costs of the maintenance, operation, and improvements required by the department in carrying out the functions, powers, and duties otherwise imposed by law on the department or the Director of the Department of Labor.

(b) The director may issue vouchers for salaries and expenses of the division when proper appropriation has been made for the expenditures.

History. Acts 1961, No. 494, § 8; A.S.A. 1947, § 81-508; Acts 2001, No. 577, § 6.

Amendments. The 2001 amendment rewrote (c), which formerly read: "All money received under the provisions of this chapter shall be paid to the Treasurer of State, who shall place this money to the

credit of the Boiler Inspection Division, and the salaries and expenses of operating the division shall be paid therefrom"; and substituted "The director" for "The Chief Inspector of the Boiler Inspection Division" in (b).

SUBCHAPTER 2 — ADMINISTRATION

SECTION.

20-23-201. Boiler Advisory Board — Creation — Duties.

20-23-202. Chief inspector, deputy inspector, etc.

SECTION.

20-23-203. Chief inspector's duty to inspect and enforce.

Effective Dates. Acts 1961, No. 494, § 12: Mar. 17, 1961. Emergency clause provided: "It has been found and is declared by the General Assembly of the State of Arkansas that the existing laws are inadequate to protect the public from the dangers inherent in the sale, installation, repair and operation of steam boilers and/or unfired pressure vessels and there is urgent need for the strengthening of the laws in this connection — therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force and effect from and after its passage and approval."

Acts 1970 (Ex. Sess.), No. 65, § 4: Mar. 13, 1970. Emergency clause provided: "It is hereby found and determined by the General Assembly that the fees presently prescribed by law for the inspection of boilers are inadequate to provide necessary funds for this essential function and that this Act is immediately necessary to increase boiler inspection fees to correct this situation. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 162, § 5: Feb. 12, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that the fees presently prescribed

by law for the inspection of boilers are inadequate to provide necessary funds for this essential function and that this Act is immediately necessary to increase boiler inspection fees to correct this situation. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 526, § 5: Mar. 22, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that the fees presently prescribed by law for the inspection of boilers are inadequate to provide necessary funds for this essential function and that this Act is immediately necessary to increase boiler inspection fees to correct this situation. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 9, § 5: Feb. 2, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the fees presently prescribed by law for the inspection of boilers are inadequate to provide necessary funds for this essential function and that this Act is immediately necessary to increase boiler inspection fees to correct this situation.

Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 303, § 5: Mar. 2, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the fees presently prescribed by law for the inspection of boilers are inadequate to provide necessary funds for this essential function and that this Act is immediately necessary to increase boiler inspection fees to correct this situation. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 477, § 10: January 1, 1994.

Acts 1997, No. 250, § 258: Feb. 24,

1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

20-23-201. Boiler Advisory Board — Creation — Duties.

(a)(1) There is created a Boiler Advisory Board.

(2)(A) The board shall be appointed by the Governor.

(B) The Director of the Department of Labor or his or her designee shall be ex officio chair. The board shall consist of four (4) members:

(i) One (1) member, who shall be employed by an insurance company insuring boilers and who shall have had issued to him or her a certificate of competency and commission as an inspector of boilers, shall represent insurance companies insuring boilers;

(ii) A second member, who shall be an owner or official of a concern using at least two hundred (200) boiler horsepower and who shall have had ten (10) years' experience in the operation of boilers, shall represent concerns using boilers;

(iii) A third member, who shall have had ten (10) years' experience in the construction of boilers, shall represent the boiler manufacturers or boilermakers; and

(iv) A fourth member, who shall have had ten (10) years' experience in the operation of boilers, shall represent the operating engineers.

(3) The terms of office of the four (4) members so appointed shall be for four (4) years, shall commence on the dates of appointment, and shall be arranged in such a manner that the term of one (1) of the members shall expire on January 14 of each year.

(b) The duties of the board shall be:

(1) To assist with the formulation of rules and regulations of the construction, installation, inspection, repair, and operation of boilers

and unfired pressure vessels and their appurtenances and of pressure piping, as set out in this chapter;

(2) To assist in giving examinations to applicants seeking certificates of competency and commissions as inspectors of boilers; and

(3) To give counsel and advice as will aid the Chief Inspector of the Boiler Inspection Division in the performance of his or her duties.

(c) The board may not meet more often than four (4) times a year at the call of the chief inspector, who shall designate in the call the time and place of the meeting.

(d) The members except the ex officio chair may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1961, No. 494, § 2; 1975, No. 162, § 1; 1979, No. 526, § 1; 1981, No. 9, § 1; 1983, No. 303, § 1; A.S.A. 1947, § 81-502; Acts 1993, No. 477, § 2; 1997, No. 238, § 1; 1997, No. 250, § 196; 1999, No. 982, § 5; 2003, No. 619, § 1.

Publisher's Notes. The terms of the members of the Boiler Advisory Board are

arranged so that one term expires every year.

Amendments. The 2003 amendment substituted "four (4)" for "five (5)" once in (a)(2)(B) and twice in (a)(3); made gender neutral changes in (a)(2)(B) and (a)(2)(B)(i); and deleted former (a)(2)(B)(v) and made related changes.

20-23-202. Chief inspector, deputy inspector, etc.

(a)(1) When the office of chief inspector becomes vacant, the Director of the Department of Labor shall employ a citizen of the State of Arkansas to be Chief Inspector of the Boiler Inspection Division.

(2) The chief inspector shall have at the time of employment not less than ten (10) years' experience in the construction, maintenance, installation, and repair or inspection of high pressure boilers and unfired pressure vessels.

(b)(1)(A) The director is authorized and empowered to employ a technical assistant and deputy inspectors of boilers.

(B) Inspectors of steam boilers and unfired pressure vessels shall have had at the time of employment not less than five (5) years' experience in the construction, maintenance, installation, and repair of high pressure boilers and unfired pressure vessels or possess a currently valid commission from the National Board of Boiler and Pressure Vessel Inspectors.

(C)(i) Inspectors of steam boilers and unfired pressure vessels also shall have passed a written examination.

(ii) The examination shall conform to standards not exceeding those prescribed by the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers.

(iii) The examination shall test the inspector's knowledge of the construction, installation, maintenance, and repair of boilers and their appurtenances.

(2) The director is also empowered to employ clerical and administrative employees, as well as other inspectors, as necessary to perform the work of the Boiler Inspection Division.

(3) The salaries are to be approved by the General Assembly.

(c) The salaries of the employees of the division, together with the necessary expenses of the division, shall be paid out of the fees for which provision is made in this chapter.

History. Acts 1961, No. 494, § 1; A.S.A. 1947, § 81-501; Acts 1989, No. 927, § 3; 1999, No. 982, § 6; 2005, No. 1012, § 2.

Amendments. The 2005 amendment substituted “employ” for “appoint and may remove for cause when so appointed” in (a)(1); in (a)(2), substituted “have at the time of employment” for “be a qualified boilermaker who has had at the time of the appointment,” inserted “or inspection” and deleted “of which at least three (3) years has been in the inspection of boilers” from the end; substituted “director” for “chief inspector” in (b)(1) and (b)(2); in-

serted “or possess ... Vessel Inspectors” in (b)(1)(A); inserted the subdivision designations in (b)(1)(B); substituted “Inspectors of steam boilers and unfired pressure vessels” for “They” in (b)(1)(A) and (b)(1)(B)(i); substituted “The examination shall test the inspector’s” for “It shall test their” in (b)(1)(B)(iii); deleted former (b)(1)(C); substituted “clerical and administrative employees, as well as other inspectors” for “a secretary, chief clerk, bookkeeper, and stenographers” in (b)(2); deleted former (c); redesignated former (d) as present (c); and rewrote present (c).

RESEARCH REFERENCES

Ark. L. Rev. McKay, Comments: Administrative Searches and the Fourth

Amendment’s Warrant Requirement, 32 Ark. L. Rev. 755.

20-23-203. Chief inspector’s duty to inspect and enforce.

(a) The Chief Inspector of the Boiler Inspection Division, either personally or by a deputy inspector, shall carefully:

(1) Inspect internally and externally one (1) time annually every high pressure steam boiler and steam generating apparatus;

(2) Inspect externally one (1) time annually and internally one (1) time every three (3) years every low pressure steam heating boiler to the extent permitted by the design and construction of the boiler;

(3) Inspect one (1) time biennially every unfired pressure vessel located in this state that is not excepted from the inspections by this chapter; and

(4) Give the owner or operator of the boiler notice of the time when an internal inspection will be made.

(b) The chief inspector shall have free access at all reasonable times for himself or herself and his or her deputies to any premises in this state where a boiler or pressure piping is being built or where a boiler or pressure piping or power plant apparatus is being installed or operated, for the purpose of ascertaining whether the boiler or piping or apparatus is built, installed, and fitted with the necessary appliances and operated in accordance with this chapter and the regulations adopted pursuant to this chapter.

(c)(1) The chief inspector shall enforce the laws of the state governing the use of boilers and unfired pressure vessels. He or she shall examine into and report to the Director of the Department of Labor the causes of boiler explosions which occur within the state.

(2) He or she shall keep in his or her office a complete and accurate record of the names of all owners or operators of boilers inspected by his

or her division, together with the location, make, type, dimensions, age, condition, pressure allowed upon, and date of the last inspection of all boilers and shall make an annual report thereon to the director.

History. Acts 1961, No. 494, § 3; 1970 (Ex. Sess.), No. 65, § 1; 1975, No. 162, § 2; 1979, No. 526, § 2; 1981, No. 9, § 2; 1983, No. 303, § 2; A.S.A. 1947, § 81-503; Acts 1993, No. 477, § 3; 1999, No. 982, § 7; 2005, No. 1012, § 3.

Amendments. The 2005 amendment inserted the subdivision designations in (a) and made related changes; substituted

“a deputy” for “the deputy” in present (a); inserted “high pressure steam” in present (a)(1); inserted (a)(2); substituted “Inspect” for “The chief inspector or his deputy shall also inspect” in present (a)(3); and, in present (a)(4), substituted “Give” for “shall give” and “an internal inspection” for “the inspection.”

SUBCHAPTER 3 — CERTIFICATION OF BOILERS

SECTION.

- 20-23-301. Certificate of inspection required — Application of regulations and standards — Penalties.
- 20-23-302. Report by manufacturer, owner, and user.
- 20-23-303. Hydrostatic pressure testing.
- 20-23-304. Failure to make ready for inspection.
- 20-23-305. Special inspection.
- 20-23-306. Issuance.
- 20-23-307. New boilers and unfired pres-

SECTION.

- sure vessels — Permit required.
- 20-23-308. New boilers and unfired pressure vessels — Fees.
- 20-23-309. New boilers and unfired pressure vessels — Penalty.
- 20-23-310. Suspension.
- 20-23-311. Inspection fees generally.
- 20-23-312. Inspection fees — Collection.
- 20-23-313. Inspection fees — Hearing — Judgment.
- 20-23-314. Pressure piping inspections.

Effective Dates. Acts 1961, No. 494, § 12; Mar. 17, 1961. Emergency clause provided: “It has been found and is declared by the General Assembly of the State of Arkansas that the existing laws are inadequate to protect the public from the dangers inherent in the sale, installation, repair and operation of steam boilers and/or unfired pressure vessels and there is urgent need for the strengthening of the laws in this connection — therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force and effect from and after its passage and approval.”

Acts 1970 (Ex. Sess.), No. 65, § 4; Mar. 13, 1970. Emergency clause provided: “It is hereby found and determined by the General Assembly that the fees presently prescribed by law for the inspection of boilers are inadequate to provide necessary funds for this essential function and that this Act is immediately necessary to increase boiler inspection fees to correct

this situation. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1975, No. 162, § 5; Feb. 12, 1975. Emergency clause provided: “It is hereby found and determined by the General Assembly that the fees presently prescribed by law for the inspection of boilers are inadequate to provide necessary funds for this essential function and that this Act is immediately necessary to increase boiler inspection fees to correct this situation. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1977, No. 404, § 2; Mar. 11, 1977. Emergency clause provided: “It is hereby found and determined by the General Assembly that the fees presently prescribed

by law for the inspection of boilers are inadequate to provide necessary funds for this essential function and that this Act is immediately necessary to increase boiler inspection fees to correct this situation. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 526, § 5: Mar. 22, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that the fees presently prescribed by law for the inspection of boilers are inadequate to provide necessary funds for this essential function and that this Act is immediately necessary to increase boiler inspection fees to correct this situation. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 9, § 5: Feb. 2, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the fees presently prescribed by law for the inspection of boilers are inadequate to provide necessary funds for this essential function and that this Act is immediately necessary to increase boiler inspection fees to correct this situation. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the

public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 303, § 5: Mar. 2, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the fees presently prescribed by law for the inspection of boilers are inadequate to provide necessary funds for this essential function and that this Act is immediately necessary to increase boiler inspection fees to correct this situation. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 477, § 10: Jan. 1, 1994.

Acts 2003, No. 1184, § 3: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the effectiveness of this act on July 1, 2003, is essential to the operation of the Boiler Inspection Division of the Arkansas Department of Labor; and that this act is immediately necessary because a delay in receiving these additional funds could impose irreparable harm upon the proper administration of these essential governmental programs and could lead to unsafe working conditions for boiler operators in this state. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003."

20-23-301. Certificate of inspection required — Application of regulations and standards — Penalties.

(a)(1) No owner or user of a boiler or pressure vessel or engineer or fireman in charge of a boiler or pressure vessel shall operate or allow the boiler or pressure vessel to be operated without a certificate of inspection issued by the Director of the Department of Labor or shall allow a greater pressure in the boiler or pressure vessel than is allowed by the certificate of inspection.

(2)(A) All boilers and pressure vessels installed or in operation in this state shall conform to those regulations and standards that shall from time to time be adopted by the Boiler Inspection Division with the approval of the director.

(B) The regulations and standards shall not exceed those set out in the several sections of the Boiler and Pressure Vessel Code of the

American Society of Mechanical Engineers and shall have the force of law immediately upon their approval by the director.

(3) No person shall operate or cause to be operated any boiler or unfired pressure vessel on which the certificate of inspection has been suspended or the operation of which has been forbidden by an inspector as provided in §§ 20-23-203, 20-23-306, 20-23-310, 20-23-401, and 20-23-402.

(4) All pressure piping installed in this state shall conform to those regulations and standards that shall from time to time be adopted by the division with the approval of the director. The regulations and standards shall not exceed those set out in the American Society of Mechanical Engineers Code for pressure piping, Power Piping Code, B31.1.

(b) Any person violating this section shall be subject to an administrative fine of not less than twenty-five dollars (\$25.00) nor more than one thousand dollars (\$1,000).

History. Acts 1961, No. 494, § 5; A.S.A. 1947, § 81-505; Acts 1993, No. 477, § 4; 1999, No. 982, § 8; 2005, No. 1012, § 4.

Amendments. The 2005 amendment, in (a)(1), inserted "or pressure vessel" fol-

lowing "user of a boiler" and substituted "boiler or pressure vessel" for "it" three times; inserted the subdivision designations in (a)(2); and inserted "and pressure vessels" in present (a)(2)(A).

20-23-302. Report by manufacturer, owner, and user.

(a) Every manufacturer, owner, or user of a boiler or unfired pressure vessel in use or to be used in any part of the state and subject to inspection by the Boiler Inspection Division, as provided by this chapter, shall report to the division the location of the boiler or unfired pressure vessel at such times and in such manner and form as may be determined by the rules and regulations of the division.

(b) Any owner, user, or agent of the owner of any boiler or unfired pressure vessel subject to inspection by the division, as provided in this chapter, who shall fail to report its location to the division shall be subject to an administrative fine of not less than one hundred dollars (\$100).

History. Acts 1961, No. 494, §§ 4, 6; 1970 (1st Ex. Sess.), No. 65, § 2; 1975, No. 162, § 3; 1977, No. 404, § 1; 1979, No.

526, § 3; 1981, No. 9, § 3; 1983, No. 303, § 3; A.S.A. 1947, §§ 81-504, 81-506; Acts 1999, No. 982, § 9.

20-23-303. Hydrostatic pressure testing.

(a) Boilers and pressure vessels may be tested by hydrostatic pressure one-quarter ($\frac{1}{4}$) greater than the maximum allowable working pressure when in the judgment of the inspector such a test is necessary to ascertain the true condition of the boiler.

(b) All boilers to be tested by hydrostatic pressure shall be filled with water at no less than ambient temperature but in no case less than seventy degrees Fahrenheit (70° F). The metal temperature shall not

exceed one hundred twenty degrees Fahrenheit (120° F) during the final examination.

(c) The responsibility for hydrostatic testing shall be that of the owner.

History. Acts 1961, No. 494, § 4; A.S.A. 1947, § 81-504; Acts 1999, No. 982, § 10.

20-23-304. Failure to make ready for inspection.

Any owner, user, or agent of the owner of any boiler subject to inspection by the Boiler Inspection Division who shall fail to have a boiler ready for inspection after due notice as provided in this chapter shall pay to the division the inspection fee provided by this subchapter and shall be subject to an administrative fine of any sum not less than ten dollars (\$10.00).

History. Acts 1961, No. 494, § 6; 1970 § 3; 1981, No. 9, § 3; 1983, No. 303, § 3; (1st Ex. Sess.), No. 65, § 2; 1975, No. 162, A.S.A. 1947, § 81-506; Acts 1999, No. 982, § 3; 1977, No. 404, § 1; 1979, No. 526, § 11.

20-23-305. Special inspection.

If at any time the owner, user, or agent of the owner of any boiler within the state shall desire a special inspection of any boiler, it shall be made by the Boiler Inspection Division after due request thereof. The inspector making the inspection shall collect a fee of one hundred dollars (\$100) for each boiler together with his or her expenses from Little Rock to the place of inspection and return.

History. Acts 1961, No. 494, § 6; 1970 § 3; 1981, No. 9, § 3; 1983, No. 303, § 3; (1st Ex. Sess.), No. 65, § 2; 1975, No. 162, A.S.A. 1947, § 81-506; Acts 1991, No. 560, § 3; 1977, No. 404, § 1; 1979, No. 526, § 1.

20-23-306. Issuance.

(a)(1) Upon receipt by the Boiler Inspection Division of an annual or biennial certificate report of inspection from a state inspector or from an inspector employed by an insurance company that a boiler or pressure vessel is in safe working condition with the required fittings, valves, and appliances properly installed and set, the Director of the Department of Labor shall issue to the owner of the boiler or pressure vessel a certificate of inspection.

(2) The certificate of inspection shall be issued upon payment of a fee of fifteen dollars (\$15.00) in cases of all boilers other than unfired pressure vessels and a fee of thirty dollars (\$30.00) in cases of unfired pressure vessels.

(3) The certificate of inspection shall state the maximum pressure at which the boiler or pressure vessel may be operated as may be determined by the rules adopted by the division, as provided in this chapter.

(b) Thereupon, the owner or user may operate boilers other than unfired pressure vessels described in the certificate for one (1) year from the date of annual inspection and in the case of unfired pressure vessels, for two (2) years from the date of biennial inspection and until another inspection is made unless the certificate shall be sooner withdrawn.

(c) Any owner or operator of a boiler or pressure vessel who is dissatisfied with the result of an inspection made by an inspector employed by an insurance company may appeal to the Chief Inspector of the Boiler Inspection Division, who shall cause a special investigation to be conducted and, upon the report of the inspection, shall render his or her decision, the decision to be final.

History. Acts 1961, No. 494, § 3; 1970 (1st Ex. Sess.), No. 65, § 1; 1975, No. 162, § 2; 1979, No. 526, § 2; 1981, No. 9, § 2; 1983, No. 303, § 2; A.S.A. 1947, § 81-503; Acts 1999, No. 982, § 12; 2003, No. 1184, § 1.

Amendments. The 2003 amendment, in (a)(2), substituted “fifteen dollars (\$15.00)” for “ten dollars (\$10.00)” and “thirty dollars (\$30.00)” for “twenty dollars (\$20.00).”

20-23-307. New boilers and unfired pressure vessels — Permit required.

(a) Every manufacturer, contractor, jobber, owner, or user of a boiler or unfired pressure vessel or pressure piping system shall obtain a permit from the Boiler Inspection Division before any boiler or unfired pressure vessel or pressure piping system may be installed or moved and installed in the State of Arkansas.

(b) When new boilers or unfired pressure vessels are to be installed, the manufacturer’s data report for each boiler and unfired pressure vessel shall be submitted with the application for installation.

(c) No boiler or unfired pressure vessel or pressure piping may be installed without approval from the division.

History. Acts 1961, No. 494, § 7; 1970 (1st Ex. Sess.), No. 65, § 3; 1975, No. 162, § 4; 1979, No. 526, § 4; 1981, No. 9, § 4;

1983, No. 303, § 4; A.S.A. 1947, § 81-507; Acts 1993, No. 477, § 5; 1999, No. 982, § 13.

20-23-308. New boilers and unfired pressure vessels — Fees.

(a) The following fees shall be paid before permits may be issued for the installation of any boiler or unfired pressure vessel:

- (1) BOILERS:
- (A) Up to 25 horsepower, incl.

(B) Over 25 horsepower to 50 horsepower, incl.

(C) Over 50 horsepower to 100 horsepower, incl.

(D) Over 100 horsepower to 200 horsepower, incl.

(E) Over 200 horsepower to 300 horsepower, incl.

(F) Over 300 horsepower to 400 horsepower, incl.

(G) Over 400 horsepower to 500 horsepower, incl.

(H) Over 500 horsepower
- \$15.00

20.00

25.00

30.00

50.00

60.00

70.00

95.00

(2) UNFIRED PRESSURE VESSELS, INCLUDING HOT WATER STORAGE CONTAINERS:

(A) 500 gallons capacity or less \$15.00

(B) 501 gallons capacity to 1,000 gallons capacity 20.00

(C) 1,001 gallons capacity to 5,000 gallons capacity 40.00

(D) 5,001 gallons capacity and over 50.00

(b) The fee paid for the issuance of a permit for the installation of pressure piping shall be one hundred dollars (\$100).

History. Acts 1961, No. 494, § 7; 1970 (1st Ex. Sess.), No. 65, § 3; 1975, No. 162, § 4; 1979, No. 526, § 4; 1981, No. 9, § 4; 1983, No. 303, § 4; A.S.A. 1947, § 81-507; Acts 1993, No. 477, § 6.

20-23-309. New boilers and unfired pressure vessels — Penalty.

Every manufacturer, jobber, dealer, or individual selling or offering for sale or operating any boiler or unfired pressure vessel or installing any pressure piping that does not meet the requirements of the rules and regulations adopted under this chapter shall be guilty of a felony and upon conviction shall be fined not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000) and in addition may be imprisoned for not more than three (3) years, or both.

History. Acts 1961, No. 494, § 7; 1970 (1st Ex. Sess.), No. 65, § 3; 1975, No. 162, § 4; 1979, No. 526, § 4; 1981, No. 9, § 4; 1983, No. 303, § 4; A.S.A. 1947, § 81-507; Acts 1993, No. 477, § 7.

20-23-310. Suspension.

(a)(1) The Chief Inspector of the Boiler Inspection Division or his or her authorized representatives may at any time suspend an inspection certificate when in their opinion the boiler or unfired pressure vessel for which it was issued cannot be operated without menace to the public safety or when the boiler or unfired pressure vessel is found not to comply with the rules and regulations provided in this subchapter.

(2) Any insurance company inspector who has been issued an Arkansas commission and is inspecting boilers or pressure vessels in this state shall have corresponding powers with respect to operating certificates for boilers or pressure vessels insured by the company employing him or her.

(3) The suspension of an operating certificate shall continue in effect until the boiler or pressure vessel shall have been made to conform to the rules and regulations of the Boiler Inspection Division and until the operating certificate shall have been reinstated.

(b) Any inspector of the division or any commissioned inspector of any insurance company who after inspection of a boiler or unfired pressure vessel shall find it unsafe for operation shall suspend its certificate of inspection and forbid its further use until it shall have been made to conform to the standards adopted by the division and until its certificate of inspection shall have been reinstated by an authorized inspector.

History. Acts 1961, No. 494, §§ 3, 4; § 2; 1983, No. 303, § 2; A.S.A. 1947, 1970 (1st Ex. Sess.), No. 65, § 1; 1975, No. §§ 81-503, 81-504; Acts 1999, No. 982, 162, § 2; 1979, No. 526, § 2; 1981, No. 9, § 14.

20-23-311. Inspection fees generally.

(a) Within thirty (30) days from the date of inspection, there shall be paid for the annual inspection of each boiler by the Boiler Inspection Division made according to the provisions of this chapter, the sum as follows:

(1) BOILERS:

(A) Up to and including 15 horsepower, incl.	\$10.00
(B) Over 15 horsepower to 50 horsepower, incl.	13.00
(C) Over 50 horsepower to 100 horsepower, incl.	18.00
(D) Over 100 horsepower to 150 horsepower, incl.	20.00
(E) Over 150 horsepower to 250 horsepower, incl.	23.00
(F) Over 250 horsepower to 500 horsepower, incl.	35.00
(G) Over 500 horsepower	50.00

(2) SHOP INSPECTIONS: Per day, four hundred and forty dollars (\$440); per half day, two hundred and twenty dollars (\$220); plus expenses, including mileage not to exceed the rate authorized by the General Assembly to employees of state agencies who furnish their own transportation, and meals and lodging in accordance with that approved by the General Assembly as a daily allowance.

(3) UNFIRED PRESSURE VESSELS:

(A) 150 gallons or less	\$9.00
(B) 151 gallons to 500 gallons	10.00
(C) 501 gallons to 1,000 gallons	11.00
(D) 1,001 gallons to 2,000 gallons	12.00
(E) 2,001 gallons to 3,000 gallons	13.00
(F) 3,001 gallons to 5,000 gallons	14.00
(G) 5,001 gallons and over	18.00

(b) The rates in subsection (a) of this section may be reduced by the Director of the Department of Labor at the beginning of any fiscal year if the rates produce a greater amount of revenue than is required to defray the cost of operation of the division.

(c) All inspection fees shall be paid by the owner, user, or agent of the owner, and the inspector may receive the fee and issue his or her receipt therefor.

(d) If the owner, user, or agent of the owner shall fail to pay any inspection fee under this section within thirty (30) days, a civil money penalty equal to the amount of the unpaid fee shall attach to the outstanding amount of the fee, and the director shall be empowered to collect this penalty in addition to the amount of the fee.

History. Acts 1961, No. 494, § 6; 1970 § 3; 1981, No. 9, § 3; 1983, No. 303, § 3; (1st Ex. Sess.), No. 65, § 2; 1975, No. 162, A.S.A. 1947, § 81-506; Acts 1991, No. 560, § 3; 1977, No. 404, § 1; 1979, No. 526, § 2; 1997, No. 220, § 1.

20-23-312. Inspection fees — Collection.

(a)(1) In addition to other remedies provided for by this chapter, if after the making of any inspection or accrual of any charge or penalty required or authorized by this chapter, the fee, penalty, or charge is not paid within thirty (30) days after demand upon whoever is liable therefor, the Director of the Department of Labor may employ an attorney, who is empowered without payment of costs or giving of bond for costs to institute suit in the name of the State of Arkansas in any court of competent jurisdiction to collect the fees, penalties, costs, and charges.

(2)(A) The court where suit is brought pursuant to subdivision (a)(1) of this section for collection of fees, penalties, and charges shall, without limitation, based on the actual amount of the judgment award an attorney's fee equal to the actual cost to the Department of Labor or the Boiler Inspection Division for the regular hourly rate of pay of the attorney multiplied by the actual hours, including, but not limited to, travel time, litigation, and case review.

(B) Furthermore, the court shall award, without limitation, based on the actual amount of the judgment an amount equal to all costs incurred by the department or the division, including, but not limited to, travel costs, witness fees, sheriff's service fees, or costs incurred pursuant to the collection of any judgment obtained by the department or division.

(b)(1) The plaintiff in the suits is given a lien upon the boiler and all parts, connections, and attachments thereto, whether attached to the land or not, to accrue the payment of the inspection fees for making the inspection.

(2) The lien shall attach to the property at the time of making the inspection and shall continue until all inspection fees are paid.

(3) The lien, when it so attaches, shall be held to be prior, paramount, and superior to the liens, claims, and demands of all persons whomsoever, whether owners, agents, mortgagees, trustees, and beneficiaries under trusts or owners whether prior in time or not.

History. Acts 1961, No. 494, § 6; 1970 § 3; 1981, No. 9, § 3; 1983, No. 303, § 3; (1st Ex. Sess.), No. 65, § 2; 1975, No. 162, A.S.A. 1947, § 81-506; Acts 1997, No. 220, § 3; 1977, No. 404, § 1; 1979, No. 526, § 2.

20-23-313. Inspection fees — Hearing — Judgment.

(a) The plaintiff shall file notice of the lien with the clerk of the circuit court of the county in which the property is located within ninety (90) days after the date of the inspection of the property, in the form and manner substantially the same as mechanics' liens are now filed. The notices when so filed shall be docketed and placed on file as mechanics' liens are now docketed and kept on file.

(b) If the fees are not paid within sixty (60) days after filing of the notice, the plaintiff shall institute a suit to foreclose the lien upon this property in the circuit court of the county in which the lien is filed. The

suit shall be filed against the person causing the inspection to be made or claiming an interest at the time the inspection is made. It shall also name such other persons as it may believe to be interested in the property, as owners, mortgagees, or otherwise, make them defendants in the action, and cause service of process, in the manner and form as now provided by law in mechanics' liens cases, to be served upon defendants.

(c)(1) The suits shall be given speedy trial, and the judgment, if for the plaintiff, shall be that the plaintiff recover against the property and those found to be interested therein, the amount of the inspection fees, together with interest, cost of suit, and reasonable attorney's fees to be taxed as costs by the court.

(2) If the cause is appealed to a higher court, then a similar fee shall be taxed as costs by the court hearing the appeal if the plaintiff shall prevail therein.

(d)(1) In its judgment, the court also shall order the property sold to satisfy the lien, judgment, and costs and shall order execution against the defendants against whom judgment is rendered in addition thereto for payment of any judgment and costs over the amount the property may bring at sale.

(2) The sale shall be had and conducted in accordance with other judicial sales, as may be directed by the court in which the foreclosure proceedings are conducted.

(3) Out of the proceeds of the sale shall be paid the judgment, costs, interest, and expenses of the sale, as in other foreclosure cases. The remainder is to be paid over to the persons decreed by the court to be rightfully entitled to it.

History. Acts 1961, No. 494, § 6; 1970 § 3; 1981, No. 9, § 3; 1983, No. 303, § 3; (1st Ex. Sess.), No. 65, § 2; 1975, No. 162, A.S.A. 1947, § 81-506. § 3; 1977, No. 404, § 1; 1979, No. 526,

20-23-314. Pressure piping inspections.

(a) The installation of pressure piping shall be periodically inspected during the course of the installation by an inspector commissioned pursuant to the provisions of § 20-23-401 in the manner and with the frequency prescribed by the rules and regulations of the Boiler Inspection Division.

(b)(1) Upon completion of the installation of any pressure piping, a final inspection shall be made, and the inspector shall complete a final inspection report on a form approved by the Director of the Department of Labor.

(2) A copy of the final inspection report shall be filed with the division within thirty (30) days of completion of the installation.

(c) If the report required by subsection (b) of this section is not filed within thirty (30) days after completion of the installation, the division shall designate an inspector in its employ to make the inspection and report required by subsection (b) of this section.

(d) The inspections and reports required by subsections (a) and (b) of this section may be made by an inspector in the employ of the division.

(e) For each inspection made by an inspector employed by the division and required by subsection (a), subsection (b), or subsection (c) of this section, the holder of the installation permit shall pay the division an inspection fee in the amount of four hundred forty dollars (\$440) per day or two hundred twenty dollars (\$220) per half-day, plus expenses and mileage at the rates authorized for employees of the Department of Labor who furnish their own transportation.

(f) The inspections required by this section and the installation permit required for pressure piping by § 20-23-307 shall apply only to new installations and shall not be construed as requiring an inspection or an installation permit for maintenance, repair, or renovation of existing facilities.

History. Acts 1993, No. 477, § 8.

SUBCHAPTER 4 — CERTIFICATION OF INSPECTORS, OPERATORS, ETC.

SECTION.

- 20-23-401. Inspectors generally.
- 20-23-402. Inspectors employed by insurance companies.
- 20-23-403. Inspectors — Failure to perform duties.
- 20-23-404. Operators.
- 20-23-405. Sellers, installers, and repairers.

SECTION.

- 20-23-406. Restricted lifetime license — Certificate of competency and commission.
- 20-23-407. Owner or user inspection programs.

Effective Dates. Acts 1961, No. 494, § 12: Mar. 17, 1961. Emergency clause provided: "It has been found and is declared by the General Assembly of the State of Arkansas that the existing laws are inadequate to protect the public from the dangers inherent in the sale, installation, repair and operation of steam boilers and/or unfired pressure vessels and there is urgent need for the strengthening of the laws in this connection — therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force and effect from and after its passage and approval."

Acts 1970 (Ex. Sess.), No. 65, § 4: Mar. 13, 1970. Emergency clause provided: "It is hereby found and determined by the General Assembly that the fees presently prescribed by law for the inspection of boilers are inadequate to provide necessary funds for this essential function and that this Act is immediately necessary to

increase boiler inspection fees to correct this situation. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 162, § 5: Feb. 12, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that the fees presently prescribed by law for the inspection of boilers are inadequate to provide necessary funds for this essential function and that this Act is immediately necessary to increase boiler inspection fees to correct this situation. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 526, § 5: Mar. 22, 1979. Emergency clause provided: "It is hereby

found and determined by the General Assembly that the fees presently prescribed by law for the inspection of boilers are inadequate to provide necessary funds for this essential function and that this Act is immediately necessary to increase boiler inspection fees to correct this situation. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 9, § 5: Feb. 2, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the fees presently prescribed by law for the inspection of boilers are inadequate to provide necessary funds for this essential function and that this Act is immediately necessary to increase boiler inspection fees to correct this situation. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 303, § 5: Mar. 2, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the fees presently prescribed

by law for the inspection of boilers are inadequate to provide necessary funds for this essential function and that this Act is immediately necessary to increase boiler inspection fees to correct this situation. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 477, § 10: January 1, 1994.

Acts 2003, No. 1184, § 3: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the effectiveness of this act on July 1, 2003, is essential to the operation of the Boiler Inspection Division of the Arkansas Department of Labor; and that this act is immediately necessary because a delay in receiving these additional funds could impose irreparable harm upon the proper administration of these essential governmental programs and could lead to unsafe working conditions for boiler operators in this state. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003."

20-23-401. Inspectors generally.

(a) Certificates of competency and commissions as inspectors of boilers shall be issued by the Boiler Inspection Division to persons in the employ of any company authorized to insure boilers against explosions in this state.

(b) Persons employed as inspectors shall pass a written examination as to their knowledge of the construction, installation, maintenance, and repair of boilers and their appurtenances. The examination shall be confined to questions the answers to which will aid in determining the fitness and competency of the applicant for the intended service and shall be of uniform grade throughout the state.

(c) However, a person who holds a certificate of competency or a commission issued by another state from a written examination equivalent to that required by this state may be issued a commission without further examination.

(d) For each certificate of competency and commission as inspector of boilers issued under this subchapter, a fee of twenty-five dollars (\$25.00) shall be charged to the person to whom the certificate and commission are issued.

(e) The commission shall be good for the fiscal year during which it is issued and shall be renewed upon receipt of fifteen dollars (\$15.00).

(f)(1) Any commission issued under this subchapter shall be immediately returned to the division when the inspector to whom it has been issued shall cease to be employed by the insurance company employing him or her at the time the commission was issued.

(2) If a person holding a commission as an inspector shall be employed by any other insurance company than the one by which he or she was employed at the time the commission was issued, a duplicate commission may be issued upon the payment of a fee of fifteen dollars (\$15.00), provided that the commission has been renewed annually.

(g) Commissions that have lapsed will require a renewal fee of fifteen dollars (\$15.00).

(h) Certificates of competency and commissions issued to boiler inspectors may be revoked upon notice to the holder thereof and to the employer of the inspector for:

(1) Incompetency or untrustworthiness; or

(2) Willful falsification of any matter or statement contained in his or her application or any report of any inspection.

(i) The holder of the certificate of competency and commission shall be entitled to a hearing before the division to show cause why the certificate shall not be revoked.

History. Acts 1961, No. 494, § 3; 1970 1983, No. 303, § 2; A.S.A. 1947, § 81-503; (1st Ex. Sess.), No. 65, § 1; 1975, No. 162, Acts 1999, No. 982, § 15. § 2; 1979, No. 526, § 2; 1981, No. 9, § 2;

20-23-402. Inspectors employed by insurance companies.

(a) Boiler inspectors employed by insurance companies which are authorized to insure boilers in this state shall hold certificates of competency issued by the Boiler Inspection Division as provided in this section and shall:

(1) Inspect internally and externally at least one (1) time annually all high pressure steam boilers insured by their respective companies;

(2) Inspect externally one (1) time annually and internally one (1) time every three (3) years every low pressure steam heating boiler insured by their respective companies; and

(3) Inspect unfired pressure vessels biennially.

(b) The insured boilers shall be exempt from all inspections other than those of the respective insurance company inspectors unless there is some evidence that proper inspection is not being made.

(c) Within thirty (30) days following each internal inspection made by its inspectors, each insurance company shall file a copy of the internal inspection report and date of the inspection with the division on forms approved by the Department of Labor.

(d)(1) Each insurance company shall file a report annually of all boilers insured and inspected showing location, owner, state number, and date of last inspection.

(2) The report shall be filed not later than January 30 of each calendar year.

(e)(1) If annual reports are not filed with the division by insurance companies who have insurance on boilers in the State of Arkansas within sixty (60) days from the date they are due inspection, the division shall make the required inspection.

(2) A special inspection fee of one hundred dollars (\$100) for each boiler or unfired pressure vessel inspected, plus mileage and expenses from Little Rock to point of inspection and return not to exceed the current rate authorized by the General Assembly to employees of state agencies who furnish their own transportation, plus any meals and hotel bills incurred shall be charged to the insurance company insuring the boilers or unfired pressure vessels unless an extension of time is granted by the Chief Inspector of the Boiler Inspection Division.

(f) No operating certificate issued for an insured boiler inspected by an insurance company inspector shall be valid after the boiler for which it was issued shall cease to be insured by a company authorized by this state to carry the insurance.

History. Acts 1961, No. 494, § 3; 1970 (1st Ex. Sess.), No. 65, § 1; 1975, No. 162, § 2; 1979, No. 526, § 2; 1981, No. 9, § 2; 1983, No. 303, § 2; A.S.A. 1947, § 81-503; Acts 1991, No. 560, § 3; 2005, No. 1012, § 5.

Amendments. The 2005 amendment

inserted the subdivision designations in (a) and made related changes; inserted "high pressure steam" in present (a)(1); inserted (a)(2); and, in present (a)(3), substituted "Inspect" for "except that" and deleted "shall be so inspected" at the end.

20-23-403. Inspectors — Failure to perform duties.

(a) Any inspector of boilers who shall report a boiler or pressure vessel for a certificate of inspection as safe to operate while knowing the report is false and that the boiler is unsafe to operate, who shall fail to perform his or her duties as stated in this chapter, or who shall cause the repair, installation, or sale of a boiler or pressure vessel that does not comply with the standards as set out in this chapter and the regulations provided shall be guilty of a felony.

(b) Upon conviction he or she shall be punished by a fine in any sum not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or by imprisonment not to exceed three (3) years, or by both fine and imprisonment.

History. Acts 1961, No. 494, § 7; 1970 (1st Ex. Sess.), No. 65, § 3; 1975, No. 162, § 4; 1979, No. 526, § 4; 1981, No. 9, § 4;

1983, No. 303, § 4; A.S.A. 1947, § 81-507; Acts 1999, No. 982, § 16.

20-23-404. Operators.

(a)(1) The Boiler Inspection Division shall conduct examinations for each applicant seeking a boiler operator's license.

(2) The examination may be either written or oral.

(3) Each applicant shall pay a fee of twenty-five dollars (\$25.00) for the examination and the first license.

(4) Each license shall be renewed annually. The annual fee shall be seventeen dollars (\$17.00).

(5) Before the applicant may participate in an examination, he or she shall have had not less than six (6) months of on-the-job training. Proof of this on-the-job training shall be furnished to the Department of Labor by the employer prior to the examination.

(6) A restricted license may be issued to an applicant who has passed the examination required in this subsection but who has not met the requirements of subdivision (a)(5) of this section, provided that:

(A) The restricted license shall be effective for one (1) year from the date of issue; and

(B) The licensee is to work under the direction and supervision of a regularly licensed boiler operator.

(b)(1) Any operator found operating a boiler without a certificate issued by the division or operating a boiler knowing it to be defective shall have his or her license revoked at once.

(2) Any person found operating a boiler without an operator's license shall be subject to an administrative fine of not less than twenty-five dollars (\$25.00) and not more than one hundred dollars (\$100).

History. Acts 1961, No. 494, § 7; 1970 (1st Ex. Sess.), No. 65, § 3; 1975, No. 162, § 4; 1979, No. 526, § 4; 1981, No. 9, § 4; 1983, No. 303, § 4; A.S.A. 1947, § 81-507; Acts 1999, No. 982, § 17; 2003, No. 1184, § 2.

substituted "twenty-five dollars (\$25.00)" for "sixteen dollars (\$16.00)" in (a)(2); substituted "seventeen dollars (\$17.00)" for "twelve dollars (\$12.00)" in (a)(3); and made stylistic and gender neutral changes.

Amendments. The 2003 amendment

20-23-405. Sellers, installers, and repairers.

(a)(1) All persons, firms, or corporations engaged in the sale or installation of boilers, unfired pressure vessels, hot water storage containers, or pressure piping in any location shall be licensed by the Boiler Inspection Division to perform the work.

(2) The annual license fee shall be seventy-five dollars (\$75.00) per year, payable in advance on or before January 31 of each calendar year.

(b)(1) All persons, firms, or corporations engaged in the repair of boilers or unfired pressure vessels shall be licensed by the division.

(2) The annual license fee shall be seventy-five dollars (\$75.00) annually, payable in advance on or before January 31 of each calendar year.

(c) Each person, firm, or corporation shall furnish evidence suitable to the division that the person, firm, or corporation is qualified to perform the work.

(d) The license of any person, firm, or corporation may be revoked by the division upon proof that the person, firm, or corporation is not performing the work in compliance with this chapter and the regulations as provided in this chapter.

(e) Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1,000) or by imprisonment for not more than five (5) years or by both fine and imprisonment.

(f) The provisions of §§ 20-23-104, 20-23-307 — 20-23-309, and 20-23-403 — 20-23-405 shall not apply to firms under the regulation of the Interstate Commerce Commission.

History. Acts 1961, No. 494, § 7; 1970 (1st Ex. Sess.), No. 65, § 3; 1975, No. 162, § 4; 1979, No. 526, § 4; 1981, No. 9, § 4; 1983, No. 303, § 4; A.S.A. 1947, § 81-507; Acts 1991, No. 560, § 4; 1993, No. 477, § 9.

A.C.R.C. Notes. The Interstate Com-

merce Commission, referred to in this section, was abolished by the Interstate Commerce Commission Termination Act of 1995, Pub. L. No. 104-88. The successor agency to the Interstate Commerce Commission is the Surface Transportation Board.

20-23-406. Restricted lifetime license — Certificate of competency and commission.

(a)(1)(A) Upon reaching sixty-five (65) years of age or any time thereafter, any person who has been a boiler inspector for no fewer than twelve (12) years may apply for a restricted lifetime boiler inspector's certificate of competency and commission.

(B) The certificate of competency and commission shall be issued upon satisfactory proof of age and upon payment of a fee prescribed by the Department of Labor.

(2)(A) Upon reaching sixty-five (65) years of age or any time thereafter, any person who has been a boiler operator for no fewer than twelve (12) years may apply for a restricted lifetime boiler operator's license.

(B) The license shall be issued upon satisfactory proof of age and upon payment of a fee prescribed by the department.

(3)(A) Upon reaching sixty-five (65) years of age or any time thereafter, any person who has been engaged in the sale or installation of boilers, unfired pressure vessels, hot water storage containers, or pressure piping for no fewer than twelve (12) years may apply for a restricted lifetime license.

(B) The license shall be issued upon satisfactory proof of age and upon payment of a fee prescribed by the department.

(4)(A) Upon reaching sixty-five (65) years of age or any time thereafter, any person who has been engaged in the repair of boilers or unfired pressure vessels for no fewer than twelve (12) years may apply for a restricted lifetime license.

(B) This license shall be issued upon satisfactory proof of age and upon payment of a fee prescribed by the department.

(b) The department shall promulgate rules and regulations necessary to carry out the provisions of this section.

History. Acts 1999, No. 141, § 1.

20-23-407. Owner or user inspection programs.

(a) Any owner or user of a steam boiler or pressure vessel subject to this chapter may perform any inspections required by this chapter on such vessels owned or operated by the owner or user if the owner or user meets the requirements prescribed by regulation of the Director of the Department of Labor.

(b) The director shall set out requirements for the certification of owner or user inspectors and certification of owner or user inspection programs by regulation and shall have full authority to promulgate and enforce those regulations.

(c)(1)(A) After notice and opportunity for hearing, any owner or user who is found to have violated regulations prescribed by the director pursuant to this subchapter shall be assessed a civil monetary penalty of not less than one hundred dollars (\$100) or more than five thousand dollars (\$5,000).

(B) Each day that a violation continues shall be considered a separate violation.

(2) The director may bring a civil action in a court of competent jurisdiction to recover the amount of any civil monetary penalties.

(d) In addition to civil monetary penalties, any owner or user who is found to be in violation of this section shall be guilty of a Class A misdemeanor.

History. Acts 2001, No. 1283, § 1.

CHAPTER 24**ELEVATORS, DUMBWAITERS, AND ESCALATORS****SECTION.**

- 20-24-101. Definitions.
- 20-24-102. State to have exclusive jurisdiction — Exception.
- 20-24-103. Penalties — Prosecution of violations.
- 20-24-104. Enforcement.
- 20-24-105. Elevator Safety Board — Creation — Members.
- 20-24-106. Elevator Safety Board — Powers and duties.
- 20-24-107. Elevator Safety Board — Adoption and amendment of rules and regulations.
- 20-24-108. Licenses required — Qualifications.
- 20-24-109. Application and examination for licenses — Issuance

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- and renewal.
- 20-24-110. Inspectors — Prohibited activities — Requirements.
- 20-24-111. Maintenance.
- 20-24-112. Testing and inspection required.
- 20-24-113. Report of inspection.
- 20-24-114. Additional inspections.
- 20-24-115. New construction, relocation, or alteration.
- 20-24-116. Operating permits.
- 20-24-117. Fees.
- 20-24-118. Braille tags in elevators in publicly owned buildings.
- 20-24-119. Appeals.
- 20-24-120. Exemption.

Effective Dates. Acts 1963, No. 189, § 19; July 1, 1963.

Acts 1965, No. 72, § 6; Feb. 12, 1965.
Emergency clause provided: "It is hereby

found and determined by the General Assembly that numerous elevators are being installed in this State which do not meet minimum standards for safety; that immediate steps must be taken to prohibit the installation of unsafe elevators, and to prescribe adequate standards whereby future installation of elevators in this State shall conform to accepted minimum standards for safety, and that the immediate passage of this Act is necessary in order to correct the aforementioned circumstances. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1977, No. 539, § 8: Mar. 18, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the fees presently prescribed by law for the inspection of elevators are inadequate to provide necessary funds for this essential function, that it is necessary for the health and safety of the public for persons engaged in major alteration of elevators, dumbwaiters or escalators to be registered with the Arkansas Department of Labor, that increased fees for operating and installation permits are essential to proper exercise of elevator safety regulation, and that persons holding an elevator

inspection license should be afforded due process of law before such license is revoked. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

RESEARCH REFERENCES

ALR. Liability for injury on, or in connection with, escalator. 1 ALR 4th 144.

Products liability: elevators. 7 ALR 4th 852.

Am. Jur. 26 Am. Jur. 2d, Elevators, § 1 et seq.

20-24-101. Definitions.

As used in this chapter:

(1) "Alteration" means any change made to an existing conveyance or to its hoistway, enclosure, or doors other than the repair or replacement of damaged, worn, or broken parts necessary for normal operation. The changing of the speed governor shall be considered an alteration;

(2) "Authorized representative" means the building department of cities, towns, or other governmental subdivisions designated by the Department of Labor to enforce certain provisions of this chapter;

(3) "Board" means the Elevator Safety Board;

(4) "Conveyance" means an elevator, dumbwaiter, escalator, moving sidewalk, automatic people mover, platform lift, or stairway chair lift;

- (5) "Department" means the Department of Labor;
- (6) "Director" means the Director of the Department of Labor;
- (7) "Dormant elevator, dumbwaiter, or escalator" means:

- (A) An elevator or dumbwaiter whose:

- (i) Cables have been removed;
 - (ii) Car and counterweight rest at the bottom of the shaftway; and
 - (iii) Shaftway doors are permanently boarded up or barricaded on the inside; or

- (B) An escalator whose main power feed lines have been disconnected;

- (8) "Dumbwaiter" means a hoisting and lowering mechanism, driven by mechanical power, equipped with a car which moves in guides in a substantially vertical direction, the floor area of which does not exceed nine square feet (9 sq. ft.), whose total compartment height does not exceed four feet (4'), the capacity of which does not exceed five hundred pounds (500 lbs.), and which is used exclusively for carrying freight;

- (9)(A) "Elevator" means a hoisting and lowering mechanism equipped with a car or platform which moves in guides in a substantially vertical direction.

- (B) "Elevator" shall not include a conveyor, chain or bucket hoist, construction hoist, or similar devices used for the primary purpose of elevating or lowering materials, nor shall it include tiering, piling, feeding, or similar machines or devices giving service within only one (1) story.

- (C) "Power elevator" means those driven by the application of energy other than hand or gravity.

- (D) "Hand elevators" means those driven by manual power.

- (E) "Elevator" includes vertical wheelchair lifts, inclined wheelchair lifts, and inclined stairway chair lifts installed in any location, including a private, single-family dwelling for use by individuals with physical disabilities;

- (10) "Escalator" means a power-driven, inclined, continuous stairway or runway used for raising or lowering passengers;

- (11) "Freight elevator" means an elevator used for carrying freight and on which are permitted to ride only the operator and the persons necessary for loading and unloading and such other designated persons who may be authorized by the rules of the board;

- (12) "New installation", "new elevator", "dumbwaiter", "escalator", or "new conveyance" means a complete elevator, dumbwaiter, escalator, or other conveyance installation, the application for the permit for the installation or relocation of which is filed on or after the effective date of application of the rules and regulations adopted by the board as provided in § 20-24-106(a)-(c). All other elevators, dumbwaiters, escalators, or other conveyances shall be deemed to be existing installations; and

- (13) "Passenger elevator" means an elevator that is used to carry persons other than the operator and persons necessary for loading and unloading and such other designated persons who may be authorized by the rules of the board.

History. Acts 1963, No. 189, § 1; 1977, No. 539, § 1; A.S.A. 1947, § 82-1801; Acts 1991, No. 1069, § 1; 1997, No. 208, § 21; 2005, No. 1813, § 1.

A.C.R.C. Notes. Acts 1997, No. 208, § 1, codified as § 22-4-408, provided: "Legislative intent and purpose. The General Assembly hereby acknowledges that many of the laws relating to individuals with disabilities are antiquated, functionally outmoded, derogatory, ambiguous or are inconsistent with more recently enacted provisions of the law. Consequently, it is the intent of the General Assembly and the purpose of this act to clarify the relevant chapters of Titles 1, 6, 9, 13, 14,

16, 17, 20, 22, 23, and 27 of the Arkansas Code Annotated of 1987."

Amendments. The 2005 amendment substituted "conveyance" for "elevator, dumbwaiter, or escalator" in (1); inserted present (4) and redesignated the remaining subdivisions accordingly; deleted "dumbwaiter" preceding "conveyor" in present (9)(A); substituted "any location including" for "locations other than in or at" in present (9)(D); and, in present (12), inserted "or 'new conveyance'" following "escalator" and "or other conveyance" following "escalator" twice and made related changes.

20-24-102. State to have exclusive jurisdiction — Exception.

(a) No city, town, or other governmental subdivision shall have the power to make any ordinance, bylaw, or resolution providing for the licensing, inspection, construction, installation, alteration, maintenance, or operation of elevators, dumbwaiters, or escalators or for the qualifications and duties of operators thereof within the limits of the city, town, or governmental subdivision, and any ordinance, bylaw, or resolution heretofore made or passed shall be void and of no effect.

(b) However, nothing in this chapter shall limit the right of the city, town, or other governmental subdivision to enforce this chapter as permitted by § 20-24-104(b) or to determine the amount of the fees to be charged therefor as permitted by § 20-24-117.

History. Acts 1963, No. 189, § 14; A.S.A. 1947, § 82-1814.

20-24-103. Penalties — Prosecution of violations.

(a)(1) Any person, owner, lessee, partnership, association, corporation, or inspector who violates any provision of this chapter shall be penalized by a civil fine of not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000) for each offense.

(2) Each day during which a violation continues shall be a separate offense.

(b) Actions for recovery of the penalties provided by this section shall be instituted by the Department of Labor or its authorized representative and shall be in the form of a civil action before a court of competent jurisdiction.

(c) In addition to the penalties in subsection (a) of this section, the Director of the Department of Labor may petition any court of competent jurisdiction to enjoin or restrain violations of this chapter.

History. Acts 1963, No. 189, §§ 15, 16; 1977, No. 539, § 7; A.S.A. 1947, §§ 82-1815, 82-1816; Acts 1991, No. 1063, § 1.

20-24-104. Enforcement.

(a) Except when otherwise provided, the Department of Labor shall have the power, and it shall be its duty, to enforce this chapter and the rules and regulations adopted by the Elevator Safety Board.

(b) In cities, towns, or other governmental subdivisions having a building department with qualified personnel to enforce this chapter or portions thereof, the Director of the Department of Labor may delegate the building department as the authorized representative of the Department of Labor to enforce and carry out the provisions of §§ 20-24-112 — 20-24-116 or any portion thereof as may be designated by him or her.

History. Acts 1963, No. 189, § 3;
A.S.A. 1947, § 82-1803.

20-24-105. Elevator Safety Board — Creation — Members.

(a) There is created the Elevator Safety Board, consisting of five (5) members, one (1) of whom shall be the Director of the Department of Labor, who shall serve continuously, and four (4) of whom shall be appointed by the Governor for terms of four (4) years.

(b) Upon the death, resignation, or incapacity of any member, the Governor shall fill the vacancy, for the remainder of the unexpired term, with a representative of the same interests as those of his or her predecessor.

(c) Of the four (4) appointed members:

(1) One (1) shall be a representative of the owners and lessees of elevators within this state;

(2) One (1) shall be a representative of the manufacturers of elevators used within this state;

(3) One (1) shall be a representative of an insurance company authorized to insure the operation of elevators in this state; and

(4) One (1) shall be a representative of the public at large.

(d) The board shall meet at the call of the director who shall designate in the call the time and place of the meeting.

(e) The members except the director may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1963, No. 189, § 2; members of the Elevator Safety Board,
A.S.A. 1947, § 82-1802; Acts 1997, No. other than the term of the Director of the
250, § 197. Department of Labor, are arranged so that

Publisher's Notes. The terms of the one term expires every year.

20-24-106. Elevator Safety Board — Powers and duties.

(a) It shall be the duty of the Elevator Safety Board to license elevator inspectors, elevator mechanics, and elevator contractors as provided in this chapter and to revoke or suspend any such license for cause.

(b) The board shall have the power and it shall be its duty to consult with engineering authorities and organizations studying and developing standard safety codes, including that of the American National Safety Institute/American Society of Mechanical Engineers, and determine what rules and regulations governing the qualifications, training, and duties of elevator operators and the operation, maintenance, construction, alteration, and installation of elevators, dumbwaiters, and escalators and the inspection and tests of new and existing installations are adequate, reasonable, and necessary to provide for the safety of life, limb, and property and to protect the public welfare.

(c) Upon the determination, the board shall make, amend, or repeal from time to time rules and regulations as follows:

(1) Rules and regulations for the maintenance, inspection, tests, and operation of all elevators and escalators;

(2) Rules and regulations for the construction of new elevators, dumbwaiters, and escalators;

(3) Rules and regulations for the alteration of existing elevators, dumbwaiters, and escalators;

(4) Rules and regulations prescribing minimum safety requirements for all existing elevators, dumbwaiters, and escalators; and

(5) Rules and regulations prescribing the fees for construction permits, operating permits, acceptance inspections, initial inspections, and periodic inspections for new and existing elevators, escalators, and dumbwaiters.

(d) The board shall also have the power in any particular case to grant exceptions and variations which shall only be granted when it is clearly evident that they are necessary in order to prevent undue hardship or when the existing conditions prevent compliance with the literal requirements of the rules and regulations. In no case shall any exception or variation be granted unless, in the opinion of the board, reasonable safety will be secured thereby.

(e) It shall also be the duty of the board to hear and decide any appeals from the orders or acts of the Department of Labor or its authorized representative as provided in § 20-24-119.

History. Acts 1963, No. 189, § 2; A.S.A. 1947, § 82-1802; Acts 1991, No. 1063, § 2; 2005, No. 1813, § 2.

Amendments. The 2005 amendment inserted "elevator mechanics, and elevator contractors" in (a).

20-24-107. Elevator Safety Board — Adoption and amendment of rules and regulations.

(a)(1) A public hearing shall be held by the Elevator Safety Board prior to the adoption of any rules or regulations authorized by this chapter.

(2) Copies of such rules and regulations as are proposed by the board for adoption shall be made available to all interested parties at least thirty (30) days prior to the hearing.

(3) Notice of each hearing shall be published not less than fifteen (15) days prior to the date assigned for the hearing.

(4) The rules and regulations adopted by the board shall be effective and shall be applicable on and after the effective date specified by the board but in no case less than three (3) months after the adoption by the board.

(b) The rules and regulations adopted by the board shall be amended or repealed in the same manner in which they are adopted.

(c)(1) No amendment shall be made to the rules and regulations adopted by the board unless public hearings are held as provided in subsection (a) of this section.

(2)(A) Any person engaged in the inspection, alteration, construction, repair, or operation of elevators, dumbwaiters, or escalators, or any owner, insurer, or lessee thereof, may, from time to time, by written petition to the Director of the Department of Labor, request that any rules and regulations adopted by the board under subsection (a) of this section be amended, or the director shall refer the petition to the board for its consideration and recommendation.

(B) The board shall hold public hearings with respect to the subject matter of the petition and shall thereafter approve or disapprove the petition.

(3) The amendments approved by the board shall become effective as provided in this section.

History. Acts 1963, No. 189, §§ 2, 13; 1965, No. 72, § 1; A.S.A. 1947, §§ 82-1802, 82-1813.

20-24-108. Licenses required — Qualifications.

(a)(1) The inspections of conveyances required by this chapter shall be made by an elevator inspector licensed by the Elevator Safety Board.

(2) To be eligible for a license to inspect conveyances, the applicant or licensee shall:

(A) Have experience in designing, installing, maintaining, or inspecting conveyances to the extent established by regulation of the board;

(B) Successfully pass a written examination approved by the board;

(C)(i) Submit with his or her application for a license or renewal of a license proof of an insurance policy:

(a) Issued by an insurance company authorized to do business in Arkansas; and

(b) Providing general liability coverage for at least one million dollars (\$1,000,000) for injury or death of a person and five hundred thousand dollars (\$500,000) for property damage.

(ii) The provision for liability insurance required by subdivision (a)(2)(C)(i) of this section shall not apply to elevator inspectors employed by the Department of Labor; and

(D)(i) Have no financial interest in any business or operation which manufactures, installs, repairs, modifies, or services conveyances.

(ii) This qualification does not prohibit an employee of an insurance company insuring conveyances from obtaining a license as an elevator inspector.

(b)(1)(A) Unless working under the direct supervision of a licensed elevator contractor, no person shall:

(i) Erect, construct, alter, replace, maintain, remove, or dismantle any conveyance contained within a building or structure without an elevator mechanic license; or

(ii) Wire any conveyance from the mainline feeder terminals on the controller without an elevator mechanic license.

(B) A licensed elevator mechanic is not required for removing or dismantling a conveyance:

(i) Destroyed as the result of the complete demolition of a secured building or structure; or

(ii) When the demolition to the hoistway or wellway prevents access without endangerment.

(2) To be eligible for an elevator mechanic license, the applicant or licensee shall:

(A) Have three (3) years of verifiable work experience in constructing, maintaining, servicing, and repairing conveyances to the extent established by regulation of the board; and

(B) Successfully pass a written examination approved by the board.

(c)(1) Except as provided in subsections (a) and (b) of this section, no person other than an elevator contractor may install, construct, alter, service, repair, test, maintain, or perform electrical work on a conveyance.

(2) To be eligible for an elevator contractor license, the applicant or licensee shall:

(A) Have in his or her employment a properly licensed elevator mechanic; and

(B) Submit with his or her application for a license or renewal of a license proof of an insurance policy:

(i) Issued by an insurance company authorized to do business in Arkansas; and

(ii) Providing general liability coverage for at least one million dollars (\$1,000,000) for injury or death of a person and five hundred thousand dollars (\$500,000) for property damage.

History. Acts 1963, No. 189, § 11; 1977, No. 539, § 6; 1983, No. 284, § 6; A.S.A. 1947, § 82-1811; Acts 1991, No. 1063, § 3; 2005, No. 1813, § 3.

Amendments. The 2005 amendment inserted the subdivision (1) designation in (a); redesignated former (b), (b)(1), (b)(2)

and (b)(3) as present (a)(2), (a)(2)(A), (a)(2)(B), and (a)(2)(D); added (a)(2)(C); deleted former (c); added present (b) and (c); and substituted "conveyances" for "elevators, escalators, and dumbwaiters" throughout this section.

20-24-109. Application and examination for licenses — Issuance and renewal.

(a)(1) A written application for the examination and license for elevator inspector, elevator mechanic, or elevator contractor shall be made upon a form to be supplied by the Elevator Safety Board upon request and shall be accompanied by a statement of the applicant's experience together with an examination fee not to exceed one hundred fifty dollars (\$150).

(2) The examination shall be given not more than six (6) months from the date when the applicant makes the application.

(3)(A) If the applicant is qualified and successfully passes the applicable examination specified in this section, then upon payment of a license fee, he or she shall be entitled to:

(i) A one-year license as an elevator inspector or elevator contractor; or

(ii) A two-year license as an elevator mechanic.

(B) The license fee and the license renewal fee shall be established by the board, but in no event shall either fee exceed of one thousand dollars (\$1,000).

(4)(A) There shall be no limit to the number of times an applicant may seek a license as provided in this section, except that a rejected applicant may not make application within six (6) months from the date on which he or she is notified that he or she has failed to qualify.

(B) A license fee shall be paid for the initial examination and each subsequent examination.

(b)(1) The board may license a person as an elevator inspector, elevator mechanic, or elevator contractor without examination if he or she holds an equivalent license for a state or city that has a standard of examination substantially equal to that provided for in § 20-24-108.

(2) For a period of one (1) year after August 12, 2005, the board shall issue a mechanic's license to an applicant who provides verifiable proof that he or she worked without direct supervision as an elevator constructor or maintenance or repair person for at least three (3) years before August 12, 2005.

(c) The board shall renew a license after receiving:

(1) Payment of the license renewal fee; and

(2) Submission of proof that the licensee has satisfied the continuing education requirements established by rule or regulation of the board.

(d)(1) Whenever an emergency exists and the board determines that there are not enough licensed elevator mechanics to perform the work necessary to provide for the safety of life, limb, and property and to protect the public welfare, the board may waive the requirements of this subchapter and issue an emergency elevator mechanic license that may be valid for no longer than thirty (30) days.

(2) Whenever the board determines that there are not enough licensed elevator mechanics available to perform work necessary for the completion of a project for which the Department of Labor has issued a

permit under § 20-24-115(d), the board may waive the requirements of this subchapter and issue a temporary elevator mechanic license that may be valid for no longer than thirty (30) days.

(3) The board may renew an emergency or temporary license if the circumstances justifying its original issuance continue.

History. Acts 1963, No. 189, § 11; 1977, No. 539, § 6; 1983, No. 284, § 6; A.S.A. 1947, § 82-1811; Acts 1991, No. 1063, § 4; 2005, No. 1813, § 4.

Amendments. The 2005 amendment redesignated former (a), (b), (c), (d)(1) and

(d)(2) as present (a)(1), (a)(2), (a)(3), (a)(4)(A) and (a)(4)(B); inserted “for elevator inspector, elevator mechanic, or elevator contractor” in present (a)(1); rewrote present (a)(3); inserted “or she” twice in present (a)(4)(A); and added (b)-(d).

20-24-110. Inspectors — Prohibited activities — Requirements.

(a) No elevator inspector shall inspect an elevator, escalator, or dumbwaiter if the inspector or any member of his or her immediate family has a financial interest in the building in which the elevator, escalator, or dumbwaiter is located or in any business which occupies the building in which the elevator, escalator, or dumbwaiter is located.

(b) No elevator inspector or any member of his or her immediate family shall have or maintain a financial interest in any business which manufactures, installs, repairs, alters, or services elevators, escalators, or dumbwaiters.

(c) No elevator inspector shall recommend or refer one (1) of his or her clients or customers to a specific business, firm, or corporation which manufactures, installs, repairs, alters, or services elevators, escalators, or dumbwaiters.

(d) On or before the last day of January of each year, all licensed elevator inspectors shall file with the Department of Labor a financial disclosure statement on forms provided by the department and approved by the Elevator Safety Board. Such forms shall include, but not be limited to, the following:

(1) The name and address of any corporation, firm, or enterprise in which the person has a direct financial interest of a value in excess of one thousand dollars (\$1,000). Policies of insurance issued to himself or herself or his or her spouse are not to be considered a financial interest;

(2) A list of every office or directorship held by himself or herself or his or her spouse, in any corporation, firm, or enterprise subject to the jurisdiction of the board;

(3) A list showing the name and address of any person, corporation, firm, or enterprise from which the person received compensation in excess of one thousand five hundred dollars (\$1,500) during the preceding year; and

(4) A list showing the name and address of any person, corporation, firm, or enterprise from which the persons received compensation in excess of twelve thousand five hundred dollars (\$12,500) during the preceding year.

History. Acts 1963, No. 189, § 11; A.S.A. 1947, § 82-1811; Acts 1991, No. 1977, No. 539, § 6; 1983, No. 284, § 6; 1063, § 5.

20-24-111. Maintenance.

Every elevator, dumbwaiter, and escalator shall be maintained by the owner or lessee in a safe operating condition so that it conforms to the rules and requirements of the Elevator Safety Board as adopted under § 20-24-107(a) and (b).

History. Acts 1963, No. 189, § 10; A.S.A. 1947, § 82-1810.

RESEARCH REFERENCES

ALR. Liability of building owner, lessee, or manager for injury or death resulting from use of automatic passenger elevator. 99 ALR 5th 141.

20-24-112. Testing and inspection required.

(a) All new and existing elevators, dumbwaiters, and escalators, except dormant elevators, dumbwaiters, and escalators, shall be tested and inspected in accordance with the following schedule:

(1) **INITIAL INSPECTION AND TEST OF NEW OR ALTERED INSTALLATIONS.** Every new or altered elevator, dumbwaiter, and escalator shall be inspected and tested in conformity with the applicable rules and regulations adopted by the board before the operating permit required by § 20-24-116 is issued. The inspections shall be made by a licensed elevator inspector in the employ of the Department of Labor or its authorized representative;

(2) **INITIAL INSPECTION OF EXISTING ELEVATORS, DUMBWAITERS, AND ESCALATORS.** The owner or lessee of every existing passenger elevator or escalator shall cause it to be inspected within three (3) months, and the owner or lessee of every existing freight elevator and dumbwaiter shall cause it to be inspected within six (6) months after the effective date of the rules and regulations adopted by the board under § 20-24-107(a) and (b), except that the department or its authorized representative, at its discretion, may extend the time specified in this subdivision (a)(2) for making inspections; and

(3) **PERIODIC INSPECTIONS OF ALL ELEVATORS, DUMBWAITERS, AND ESCALATORS.** The owner or lessee shall cause an inspection of every power passenger elevator and escalator to be made periodically every sixth calendar month, of every power freight elevator every twelfth calendar month, and of every dumbwaiter and elevator driven by manual power every twelfth calendar month, following the month in which the initial inspection required by subdivisions (a)(1) and (2) of this section has been made. However, any such inspection may be made during the month following the calendar month during which the inspection is due.

(b)(1) The inspections required by subdivisions (a)(2) and (3) of this section shall be made only by elevator inspectors who have been

licensed in accordance with §§ 20-24-108 and 20-24-109. However, the elevator inspectors shall not be required to make any tests.

(2) Tests required by the rules and regulations to be made by the owner, the lessee, or the authorized agent of either shall be made by a person qualified to perform such a service in the presence of a licensed elevator inspector in the employ of the department or its authorized representative.

History. Acts 1963, No. 189, § 5;
A.S.A. 1947, § 82-1805.

20-24-113. Report of inspection.

(a)(1) A report of every required inspection shall be filed with the Department of Labor or its authorized representative by the inspector making the inspection, on a form approved by the department or its authorized representative, within thirty (30) days after the inspection or test has been completed.

(2) For the inspections required by § 20-24-112(a)(2), the report shall include all information required by the department in order to determine whether the owner or lessee of the elevator, escalator, or dumbwaiter has complied with those rules and regulations adopted by the Elevator Safety Board under § 20-24-107(a) and (b) which are applicable.

(3) For the inspection required by § 20-24-112(a)(1), the report shall indicate whether the elevator, dumbwaiter, or escalator has been installed in accordance with the detailed plans and specifications approved by the department or its authorized representative under § 20-24-115(d) and (e) and meets the requirements of the applicable rules and regulations adopted by the board under § 20-24-107(a) and (b).

(b) If the report required by subsection (a) of this section is not filed within thirty (30) days after the final date when the elevator, dumbwaiter, or escalator should have been inspected as required by § 20-24-112(a)(2), the department shall designate a licensed inspector in its employ to make the inspection and report required by subsection (a) of this section.

(c)(1) For each inspection and report made at the direction of the department, the owner, lessee, or insurance company responsible for the report of inspection shall pay to the department a fee of one hundred dollars (\$100), unless otherwise provided by the board.

(2) The fee shall be paid directly to the department and shall be the only fees or charges for which the owner, lessee, or insurance company shall be liable for the inspection required by § 20-24-112(a).

History. Acts 1963, No. 189, § 5; 1965, No. 72, § 2; 1969, No. 337, § 1; 1977, No. 539, § 2; A.S.A. 1947, § 82-1805; Acts 2003, No. 360, § 1.

Amendments. The 2003 amendment,

in (c)(1), substituted "one hundred dollars (\$100)" for "fifty dollars (\$50.00)" and deleted "plus mileage allowance prescribed by state travel regulations in going to and returning from the point of inspection and

all actual expense for meals and lodging incurred in making the inspection" from the end; and, in (c)(2), deleted "and ex-

penses" following "The fee" and inserted "the" following "charges for which."

20-24-114. Additional inspections.

(a) In addition to required inspections, the Department of Labor or its authorized representative may designate a licensed inspector in its employ to make such additional inspections as may be required to enforce this chapter and the rules and regulations adopted by the Elevator Safety Board under § 20-24-107(a) and (b).

(b) The fee for conducting three-year load tests and five-year load tests shall be no more than thirty-five dollars (\$35.00).

History. Acts 1963, No. 189, § 5; 1969, No. 337, § 2; 1983, No. 284, § 1; A.S.A. 1947, § 82-1805.

20-24-115. New construction, relocation, or alteration.

(a)(1) On and after the effective date of rules and regulations adopted by the Elevator Safety Board under § 20-24-107(a) and (b), detailed plans and specifications of the elevator, dumbwaiter, or escalator to be thereafter installed, relocated, or altered shall be submitted by the contractor, or in the absence of an installing contractor, by a person or the owner, to the Department of Labor. An application for a construction or alteration permit on forms to be furnished or approved by the department shall be submitted at the same time.

(2) Repairs or replacements normally necessary for maintenance may be made on existing installations with parts equivalent in material, strength, and design to those replaced. No plans or specifications or applications need be filed for the repairs or replacements.

(b) All companies, owners, lessees, or persons engaged in this type of work within the State of Arkansas shall be approved and registered by the department.

(c) Failure to comply with subsection (a) or subsection (b) of this section subjects all to a penalty as described in § 20-24-103(a).

(d) A construction permit shall be issued by the department or its authorized representative to the installing contractor or, in his or her absence, the owner, for every new elevator, dumbwaiter, or escalator installation or alteration before the installation thereof is started. The department or its authorized representative shall issue the permit if the plans and specifications required under subsection (a) of this section indicate compliance with the applicable rules and regulations adopted by the board under § 20-24-107(a) and (b).

(e) Any person who installs an elevator, dumbwaiter, or escalator which does not meet the specifications of this chapter shall be liable for all expenses necessary to bring the elevator, dumbwaiter, or escalator into compliance with this chapter.

History. Acts 1963, No. 189, §§ 6, 7; 1965, No. 72, §§ 3, 4; 1977, No. 539, § 3; A.S.A. 1947, §§ 82-1806, 82-1807.

20-24-116. Operating permits.

(a)(1) Operating permits shall be issued by the Department of Labor within the time limits specified in this section to the owner or lessee of every new or altered elevator, dumbwaiter, and escalator and of every existing elevator, dumbwaiter, and escalator when the inspection report indicates compliance with the applicable sections of this chapter.

(2) No permits shall be issued if the fees required by § 20-24-117 have not been paid.

(3) The limits shall be thirty (30) days for existing elevators, dumbwaiters, and escalators and seven (7) days for new and altered elevators, dumbwaiters, and escalators after the required date for filing the inspection report required by § 20-24-113(a) unless time is extended by the department. No elevator, dumbwaiter, or escalator shall be operated by the owner or lessee thereof after the dates specified in this section unless the operating permit has been issued.

(4)(A) The annual fee to be charged for the operating permit issued under this chapter shall be as follows:

300 lbs. — 500 lbs. Special personnel elevators plus

- (i) Dumbwaiters \$30.00 annually
- (ii) Elevators and wheelchair lifts 50.00 annually
- (iii) Escalators and moving walks 85.00 annually

(B) A twenty percent (20%) penalty may be assessed when the fee is past due by thirty (30) days.

(b)(1) The operating permit shall indicate the type of equipment for which it is issued and in the case of elevators shall state whether passenger or freight and shall also state the contract load and speed for the elevator, dumbwaiter, or escalator.

(2) The permit shall be posted conspicuously in the car of the elevator and on or near the dumbwaiter or escalator.

(3) The permit shall be extended by endorsement of the department or its authorized representative after each periodic inspection required by § 20-24-112(a)(3) and shall not be valid unless so endorsed.

(c)(1) If the inspection report required by § 20-24-113 indicates failure of compliance with the applicable rules and regulations approved by the Elevator Safety Board under § 20-24-107 or with the detailed plans and specifications approved by the department or its authorized representative under § 20-24-115(d) and (e), the department or its authorized representative shall give notice to the owner or lessee or the person filing plans and specifications of changes necessary for compliance with the rules and regulations. After the changes have been made, the department or its authorized representative shall issue an operating permit.

(2) If the inspection report required by § 20-24-113 indicates that an elevator, dumbwaiter, or escalator is in an unsafe condition, so that its

continued operation may be dangerous to the public safety, then the department or its authorized representative, at its discretion, may require the owner or lessee to discontinue the use thereof until it has been made safe and in conformity with the rules and regulations of the board.

(d) If the department or its authorized representative has reason to believe that any owner or lessee to whom an operating permit has been issued is not complying with the applicable rules and regulations adopted by the board under § 20-24-107, it shall so notify the owner or lessee and shall give notice of a date for a hearing hereon to the owner or lessee. If after a hearing the department finds that the owner or lessee is not complying with the rules and regulations, it shall revoke the permit.

(e)(1) Pursuant to regulation of the board, the department may issue a temporary certificate of operation for a period not to exceed ninety (90) days for new installations.

(2) The fee for a temporary certificate of operation shall be established by the board in an amount not to exceed one hundred dollars (\$100).

(f) An application for a variance shall be submitted to the department with the fee established by the board in an amount not to exceed one hundred dollars (\$100).

History. Acts 1963, No. 189, § 8; 1969, No. 337, § 3; 1977, No. 539, § 4; 1983, No. 284, § 2; A.S.A. 1947, § 82-1808; Acts 1993, No. 584, § 1; 2003, No. 360, §§ 2, 3.

Amendments. The 2003 amendment

substituted “annually” for “annual” in (4)(A)(i); rewrote (4)(A)(ii); substituted “and moving walks ... \$85.00 annually” for “\$75.00 annual” in (4)(A)(iii); and added (e) and (f).

20-24-117. Fees.

(a) The following fees shall be paid to the Department of Labor for each passenger, freight, or one-man elevator or dumbwaiter installation permit:

- (1) Elevators \$150.00
- (2) Escalators and moving walks 200.00
- (3) Dumbwaiters 100.00
- (4) Wheelchair lifts 100.00
- (5) Workmen’s hoists 200.00

(b) A fee of not less than five dollars (\$5.00) and not more than one hundred dollars (\$100) shall be paid to the department for installation permits for all other types of elevators, escalators, power lifts, or moving walks.

(c) A final inspection fee and the fee for the initial operating permit are included in the installation permit fee. If a scheduled final inspection is cancelled without due notice to the department or if the elevator is not complete in the judgment of the inspector, an additional fee of one hundred dollars (\$100) shall be charged to the elevator contractor for an additional final inspection.

(d) Major alterations may be made upon obtaining a permit, which requires a payment of a fee of one hundred dollars (\$100).

(e) A fee of seventy-five dollars (\$75.00), or as otherwise prescribed by the Elevator Safety Board, shall be paid to the department for witnessing the performance of all safety tests as outlined in §§ 20-24-112 — 20-24-114.

History. Acts 1963, No. 189, § 9; 1965, No. 72, § 5; 1969, No. 337, § 4; 1977, No. 539, § 5; 1983, No. 284, §§ 3-5; A.S.A. 1947, § 82-1809; Acts 1993, No. 584, § 2; 2003, No. 360, § 4.

Amendments. The 2003 amendment rewrote (a); deleted “These fees will be applicable as follows” from the end of the former introductory paragraph in (b); deleted (b)(1); redesignated former (b)(2), (c) and (d) as present (c), (d) and (e); in

present (c), substituted “and the fee for the initial operating permit are” for “is,” “inspector” for “general inspection” and “one hundred dollars (\$100)” for “fifty dollars (\$50.00) plus expenses”; in present (d), substituted “one-hundred-dollar” for “sixty-dollar (\$60.00)” and made a minor punctuation change; and, in present (e), substituted “seventy-five dollars (\$75.00)” for “fifty dollars (\$50.00) plus expenses” and “Elevator Safety Board” for “board.”

20-24-118. Braille tags in elevators in publicly owned buildings.

(a) In all publicly owned buildings containing passenger elevators, braille tags shall be affixed on or immediately adjacent to all elevator pushbuttons, levers, or switches in order that blind persons may operate the elevators properly without assistance from sighted persons.

(b) For the purposes of this section, “publicly owned buildings” includes those buildings which are owned or operated by a municipal, county, or state government.

History. Acts 1977, No. 533, § 1; A.S.A. 1947, § 82-1817.

20-24-119. Appeals.

(a) Any person aggrieved by an order or act of the Department of Labor or its authorized representative under this chapter may, within fifteen (15) days after notice thereof, appeal from the order or act to the board, which shall, within thirty (30) days thereafter, hold a hearing of which at least fifteen (15) days’ written notice shall be given to all interested parties.

(b) Within thirty (30) days after the hearing, the Elevator Safety Board shall issue an appropriate order modifying, approving, or disapproving the order or act.

(c) A copy of the order by the board shall be served upon all interested parties.

(d) Within thirty (30) days after any order or act of the board, any person aggrieved thereby may file a petition in the circuit court of the county in which the aggrieved person resides, for a review thereof.

(e) The court shall summarily hear the petition and may make any appropriate order or decree.

History. Acts 1963, No. 189, § 12; A.S.A. 1947, § 82-1812.

20-24-120. Exemption.

Conveyances installed in private single-family dwellings shall be exempt from the testing and inspection requirements of § 20-24-112 and the permitting requirements of §§ 20-24-115 and 20-24-116.

History. Acts 2005, No. 1813, § 5.

CHAPTER 25

ARKANSAS MANUFACTURED HOMES STANDARDS ACT

SECTION.

- 20-25-101. Title.
- 20-25-102. Definitions.
- 20-25-103. No authority to operate or maintain manufactured home parks.
- 20-25-104. Penalties.
- 20-25-105. Arkansas Manufactured Home Commission — Creation — Members.
- 20-25-106. Arkansas Manufactured Home Commission — Powers and duties.

SECTION.

- 20-25-107. Administration by Director of the Arkansas Manufactured Home Commission.
- 20-25-108. Compliance with code required.
- 20-25-109. Label of compliance.
- 20-25-110. Warranty.
- 20-25-111. Reports.
- 20-25-112. Disposition of funds.
- 20-25-113. Purchase agreement.

A.C.R.C. Notes. References to “this chapter” in §§ 20-25-101 — 20-25-112 may not apply to § 20-25-113 which was enacted subsequently.

Cross References. Arkansas Manufactured Home Recovery Act, § 20-29-101 et seq.

Effective Dates. Acts 1977, No. 419, § 16: Mar. 14, 1977. Emergency clause provided: “It is hereby found and determined by the General Assembly that there has been a substantial increase in the number of mobile homes manufactured and sold in this state in recent years; that in order to protect the health and welfare of the citizens of this state there is an immediate need for regulations requiring all mobile homes to meet certain minimum standards as to safety. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1981, No. 533, § 15: Mar. 17, 1981.

Emergency clause provided: “It is hereby found and determined by the General Assembly that there has been a substantial increase in the number of manufactured homes, manufactured and sold in this state in recent years; that in order to protect the health and welfare of the citizens of this state there is an immediate need for regulations requiring all manufactured homes, to meet minimum standards as to safety and that this Act is immediately necessary to authorize such regulations. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1983, No. 131, § 6 and No. 135, § 6: Feb. 10, 1983. Emergency clauses provided: “It is hereby found and determined by the General Assembly that state boards and commissions exist for the singular purpose of protecting the public health and welfare; that citizens over 60

years of age represent a significant percentage of the population; that it is necessary and proper that the older population be represented on such boards and commissions; that the operations of the boards and commissions have a profound effect on the daily lives of older Arkansans; and that the public voice of older citizens should not be muted as to questions coming before such bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258; Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards

and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

20-25-101. Title.

This chapter shall be known and may be cited as the "Arkansas Manufactured Homes Standards Act".

History. Acts 1977, No. 419, § 1; 1981, No. 533, § 1; A.S.A. 1947, § 82-3015.

20-25-102. Definitions.

As used in this chapter:

(1) "Authorized representative" means any person or employee approved or hired by the Director of the Arkansas Manufactured Home Commission to perform inspection services;

(2) "Code" means standards adopted by the Arkansas Manufactured Home Commission;

(3) "Commission" means the Arkansas Manufactured Home Commission;

(4) "Director" means the Director of the Arkansas Manufactured Home Commission;

(5) "Installer" means a person, firm, or corporation not otherwise certified who is engaged in the business of installing manufactured homes for himself or herself or on behalf of any other person not certified under this chapter;

(6) "Label" means a label issued by the Department of Housing and Urban Development or its contract agency to be affixed onto the exterior of the manufactured home to assure compliance with the federal standards;

(7) "Manufacturer" means any person, firm, or corporation who manufactures manufactured or modular homes;

(8)(A) "Manufactured home" means a structure, transportable in one (1) or more sections, which in the traveling mode is eight (8) body feet or more in width or forty (40) body feet or more in length or, when erected on site, is three hundred twenty square feet (320 sq. ft.) or more and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities.

(B) "Manufactured home" includes the plumbing, heating, air conditioning, and electrical systems contained therein.

(C) "Manufactured home" shall include any structure which meets all the requirements of this subdivision (8) except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the Department of Housing and Urban Development and complies with the federal standards;

(9) "Modular home" means a factory-built structure:

(A) Produced in accordance with state or local construction codes and standards; and

(B) Designed to be used as a dwelling unit with a foundation when connected to the required utilities;

(10) "Person" means an individual, partnership, corporation, or other legal entity; and

(11) "Retailer" means any person in the business of accepting on consignment, buying for resale, selling, or exchanging manufactured or modular homes or offering them to the public for sale, exchange, or lease-purchase, whether for himself or herself or on behalf of any other person not certified as a retailer under this chapter.

History. Acts 1977, No. 419, § 2; 1981, No. 533, § 2; 1985, No. 314, § 1; A.S.A. 1947, § 82-3016; Acts 2001, No. 1067, § 1; 2005, No. 1235, § 1.

Amendments. The 2001 amendment substituted "Director of the Arkansas Manufactured Home Commission" for "director" in (1); deleted former (4), inserted present (5) and redesignated the remaining subdivisions accordingly; inserted

"The term 'manufactured home' in (8); added (10); and made minor stylistic changes throughout.

The 2005 amendment, in (7), inserted "firm, or corporation" and "or modular"; inserted present (9) and redesignated the remaining subdivisions accordingly; and, in present (11), inserted "or modular" and substituted "retailer under" for "dealer under."

20-25-103. No authority to operate or maintain manufactured home parks.

Nothing in this chapter shall be construed to give the Arkansas Manufactured Home Commission any authority with respect to the operation and maintenance of manufactured home parks in this state.

History. Acts 1977, No. 419, § 14; 1981, No. 533, § 13; A.S.A. 1947, § 82-3027.

20-25-104. Penalties.

(a) It shall be deemed a violation of this chapter:

(1) For any manufacturer or retailer of manufactured homes to fail to correct a code violation within a reasonable time, not to exceed ninety (90) days, of being ordered to do so in writing by an authorized representative of the Director of the Arkansas Manufactured Home Commission if the manufacturer or retailer manufactured or sold the manufactured home after March 14, 1977; or

(2) For any person to interfere with, obstruct, or hinder any authorized representative of the director in the performance of his or her duty. In seeking to determine whether a manufacturer or retailer has violated this chapter, the director shall have full authority to convene hearings and issue orders pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., which is incorporated by reference.

(b) Any individual or director, officer, or agent of a corporation who knowingly and willfully violates this chapter in a manner which threatens the health or safety of any purchaser shall be deemed guilty of a misdemeanor. Upon conviction, the person shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than one (1) year, or both, for each violation.

(c)(1) Whoever violates any provision of section 610 of Title VI of Pub. L. No. 93-383 or any regulation or final order issued pursuant to it shall be liable to the State of Arkansas for a civil penalty of not to exceed one thousand dollars (\$1,000) for each violation. Each violation of a provision of section 610 or any regulation or order issued pursuant to it shall constitute a separate violation with respect to each manufactured home or with respect to each failure or refusal to allow or perform an act required thereby, except that the maximum civil penalty may not exceed one million dollars (\$1,000,000) for any related series of violations occurring within one (1) year from the date of the first violation.

(2) Any individual or a director, officer, or agent of a corporation who knowingly and willfully violates section 610 of Title VI of Pub. L. No. 93-383 in a manner which threatens the health or safety of any purchaser shall be fined not more than one thousand dollars (\$1,000) or imprisoned not more than one (1) year, or both.

(d)(1) If a manufactured home retailer or manufacturer violates any of the provisions of this chapter or any rules or regulations governing the manufactured home program, the retailer or manufacturer may be enjoined from selling any manufactured home until the retailer or manufacturer meets all the requirements of this chapter and rules and regulations promulgated pursuant to this chapter.

(2) If any manufactured home installer violates any provision of this chapter or any rule or regulation relating to the federal Manufactured Home Construction and Safety Standards, the installer shall be enjoined from installing manufactured homes until the violations are corrected.

(3) Whenever practicable, the director shall give notice to any person against whom an action for injunctive relief is contemplated and shall

afford the person an opportunity to present his or her views, but the failure to give notice and afford an opportunity shall not preclude the granting of appropriate relief.

History. Acts 1977, No. 419, § 10; 1981, No. 533, § 10; 1983, No. 416, § 1; A.S.A. 1947, § 82-3024; Acts 2001, No. 1067, § 2.

Amendments. The 2001 amendment substituted “retailer” for “dealer” in (a)(1)-(2) and (d)(1); substituted “manufactured

home retailer” for “mobile home dealer” in (d)(1); substituted “manufactured” for “mobile” in (d)(2); and made minor stylistic changes throughout.

U.S. Code. Section 610 of Title VI of Public Law 93-383, referred to in this section, is codified as 42 U.S.C. § 5409.

20-25-105. Arkansas Manufactured Home Commission — Creation — Members.

(a)(1) There is created the Arkansas Manufactured Home Commission consisting of ten (10) members. Members shall be appointed by the Governor, to be confirmed by the Senate, and appointments shall be made in such a manner as to result in at least one (1) member residing in each congressional district as the congressional districts now and hereafter exist. The members shall be representative of the following interests:

(A) Four (4) members shall be active in the manufactured home industry;

(B) Five (5) members shall be from the public at large; and

(C) One (1) member shall be sixty (60) years of age or older and represent the elderly. He or she shall not be actively engaged in or retired from the industry of manufactured homes.

(2) Appointments of those active in the manufactured home industry shall be made by the Governor from a list of three (3) names submitted to him or her by the trade association for each appointment.

(3) Each member shall be appointed for a five-year term, except that a person appointed to fill a vacancy shall serve only the unexpired portion of the term. Each member’s term shall extend until his or her successor is appointed and qualified.

(4) The members shall not receive compensation for their services as members but may receive expense reimbursement in accordance with § 25-16-901 et seq.

(5) Membership on the commission shall not constitute holding a public office, and no member shall be disqualified from holding any public office or employment by reason of membership on the commission, nor shall the member forfeit the office or employment by reason of his appointment hereunder, notwithstanding any law to the contrary.

(b) A chair and vice chair shall be elected by the commission to serve two (2) years.

History. Acts 1977, No. 419, § 12; No. 416, § 2; A.S.A. 1947, §§ 6-623 — 1981, No. 533, § 12; 1983, No. 131, 6-626, 82-3026; Acts 1993, No. 917, § 1; §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; 1983, 1997, No. 250, § 198.

20-25-106. Arkansas Manufactured Home Commission — Powers and duties.

(a)(1) The Arkansas Manufactured Home Commission by regulation shall set uniform reasonable standards for the proper installation of manufactured homes, including, but not limited to, foundation, supports, anchoring, and underpinning of manufactured homes installed in this state.

(2) The commission by regulation shall set requirements for and require licensing and certification of manufacturers of manufactured or modular homes in this state and manufacturers of manufactured or modular homes in other states selling them in this state.

(3) The commission by regulation shall set the requirements and require licensing and certification of any retailer, salesperson, and others engaged in the sale, installation, anchoring, and servicing of manufactured or modular homes for sale in this state.

(b) The commission shall require bonding or other reasonable methods to assure that manufacturers, retailers, and others licensed or certified under this chapter will be financially responsible to fully comply with the code.

(c)(1) The commission shall by regulation establish procedures for the investigation and timely resolution of disputes among manufacturers, retailers, and installers of manufactured homes regarding responsibility for the correction or repair of construction or installation defects in manufactured homes that are reported during the one-year period beginning on the date of installation of the home.

(2) The investigations, required corrections, and remedial actions shall be handled in accordance with the code or the regulations promulgated under the code.

(d)(1) The commission or subcommittee of the commission shall convene hearings and issue orders in cases of violations of this chapter or of the code.

(2) The commission or subcommittee of the commission shall convene hearings, and the commission shall issue orders on an appeal involving differences among manufactured home manufacturers, retailers, and the Director of the Arkansas Manufactured Home Commission and his or her staff.

(e) The commission shall delegate its authority, except the authority to adopt standards, rules, and regulations, to the director.

(f) The commission shall have the power to suspend, revoke, or refuse to renew the license or certification under this chapter of any person who is found to have been guilty of:

(1) Fraud, misrepresentation, or deception in obtaining a license or certification;

(2) Accepting a manufactured or modular home, directly or indirectly, from a manufacturer not certified by the state pursuant to this chapter;

(3) Selling or delivering, directly or indirectly, a manufactured or modular home to a retailer not certified by the state pursuant to this chapter; or

(4) Violating any provision of this chapter or rules or regulations promulgated under this chapter.

(g)(1) In lieu of suspension, revocation, or refusal to renew a license certification, the commission shall have the authority to impose a monetary penalty and may suspend, refuse to renew, or revoke the license or certification until the penalty is paid to the commission. The penalty shall be imposed only if the commission formally finds that the public welfare would not be impaired by the imposition of a monetary penalty rather than suspension, refusal to renew, or revocation and that payment of the monetary penalty should achieve the desired disciplinary purpose.

(2) No monetary penalty imposed by the commission shall exceed one thousand dollars (\$1,000) per violation. Each separate transaction shall constitute a separate violation.

(3) The commission shall not impose a civil penalty upon any person whose license or certification is suspended, revoked, or not renewed under this section.

(h) Regarding any violation of this chapter or the Arkansas Manufactured Home Recovery Act, § 20-29-101 et seq., the commission shall have the power to issue subpoenas and bring before the commission as a witness any person in the state and may require the witness to bring with him or her any book, writing, or other thing under his or her control which he or she is bound by law to produce in evidence.

(i) The commission shall have the power to file suit in the Pulaski County Circuit Court to obtain a judgment for the amount of any penalty not paid within thirty (30) days of service of the order assessing the monetary penalty unless a court enters a stay pursuant to this section.

(j) All hearings and appeals therefrom under this section shall be pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(k) The commission may require manufacturers, distributors, and retailers in this state to make reports as it deems necessary. The reports shall be filed with the director.

(l) No license or certification shall be transferred or assigned to any other person.

(m)(1)(A) The commission shall have the authority to file suit in the Pulaski County Circuit Court to enjoin any manufacturer, retailer, or installer from doing business in this state without having first secured the required license or certification, or both.

(B) The commission shall have the authority to collect from the manufacturer, retailer, or installer all fees and assessments which the commission would have collected had the manufacturer, retailer, or installer secured the required license or certification, or both.

(2) The commission shall have the authority to impose a monetary penalty not to exceed one thousand dollars (\$1,000) per violation by an unlicensed manufacturer, retailer, or installer of any provision of this chapter or of the regulations promulgated under this chapter.

History. Acts 1977, No. 419, §§ 7, 12; 1981, No. 533, §§ 7, 12; 1983, No. 416, § 2; 1985, No. 314, § 2; A.S.A. 1947, §§ 82-3021, 82-3026; Acts 1991, No. 632, § 1; 2001, No. 1067, § 3; 2005, No. 1235, §§ 2, 3.

Amendments. The 2001 amendment substituted “retailer” for “dealer” in (a)(3), (b), (d)(2), (f)(3), and (k); inserted present (c) and redesignated the remaining sub-

sections accordingly; substituted “among manufactured” for “between manufactured” in (d)(2); and added (m).

The 2005 amendment inserted “or modular” twice in (a)(2) and once in (a)(3), (f)(2) and (f)(3); substituted “salesperson” for “manufactured home salesman” in (a)(3); and made a minor punctuation change.

20-25-107. Administration by Director of the Arkansas Manufactured Home Commission.

(a) The Director of the Arkansas Manufactured Home Commission shall be appointed by the Arkansas Manufactured Home Commission.

(b) The director shall administer the code for manufactured homes.

(c)(1) The director shall establish an inspection system sufficient to ensure compliance with the code by providing for inspections by members of his or her own inspection staff.

(2) The director and his or her staff shall have the right to enter and inspect all factories, warehouses, or establishments in which manufactured or modular homes are manufactured.

(d) With the approval of the commission, the director shall:

(1) Establish reasonable fees for certification, including licensing of manufactured or modular home salespersons and setting up, installing, and anchoring manufactured homes; and

(2) Establish monitoring inspection fees in accordance with the guidelines established by the Secretary of Housing and Urban Development and provide for participation in the fee distribution system set out in 24 C.F.R. 3282.307.

(e) Within the limits of appropriation, the director may appoint such employees as he or she may deem necessary for the administration of this chapter.

History. Acts 1977, No. 419, § 7; 1981, No. 533, § 7; A.S.A. 1947, § 82-3021; Acts 2005, No. 1235, § 4.

Amendments. The 2005 amendment

inserted “or modular” in (c)(2) and (d); and substituted “salesperson” for “salesman” in (d).

20-25-108. Compliance with code required.

(a) No retailer shall sell or offer for sale within this state any manufactured home unless the manufactured home complies with the code.

(b) No person shall manufacture in this state or manufacture out of this state and ship into this state for sale any manufactured home unless the manufactured home complies with the code.

History. Acts 1977, No. 419, § 3; 1981, No. 533, § 3; A.S.A. 1947, § 82-3017; Acts 2001, No. 1067, § 4.

Amendments. The 2001 amendment substituted “retailer” for “dealer” in (a).

20-25-109. Label of compliance.

(a) No retailer shall sell or offer for sale to anyone within this state any manufactured home manufactured after June 15, 1976, unless the manufactured home bears a Department of Housing and Urban Development label issued by the department or its contract agent.

(b) All manufacturers of manufactured homes in this state shall cause to be affixed a department label on all manufactured homes.

(c) The Director of the Arkansas Manufactured Home Commission, acting as in-plant primary inspection agency on contract with the department, shall issue labels to any manufacturer when he or she is sure, by inspection of the plant, that the manufacturer is complying with the federal Standard Code For Manufactured Homes.

(d)(1) All manufactured homes bearing a department label issued by the department pursuant to this chapter shall be deemed to comply with the requirements of all ordinances or regulations enacted by any local government which are applicable to the construction of such housing.

(2) The determination by the department of the scope of the approval is final.

(e) No person shall alter or cause to be altered any manufactured home to which a label has been affixed if the alteration or conversion causes the manufactured home to be in violation of the code.

History. Acts 1977, No. 419, §§ 4-6, 11; 1981, No. 533, §§ 4-6, 11; A.S.A. 1947, §§ 82-3018 — 82-3020, 82-3025; Acts 2001, No. 1067, § 5.

substituted “retailer” for “dealer” in (a); substituted “construction” for “manufacture” in (d)(1); and made minor stylistic and gender neutral changes throughout.

Amendments. The 2001 amendment

20-25-110. Warranty.

(a) Each manufactured home manufacturer in this state and manufacturers of all new manufactured homes shipped into this state for use in this state shall issue with each new manufactured home a warranty generally in use in the industry warranting the manufactured home to be free from material defects and to be manufactured in a workman-like manner.

(b) The warranty shall be to the buyer and shall set forth in writing the following terms:

(1) That the manufactured home is free from any substantial defects in material and workmanship;

(2) That the manufacturer shall take appropriate corrective action at the site of the manufactured home in instances of substantial defects in materials or workmanship which become evident after the date of delivery of the manufactured home to the buyer, provided the buyer or his or her transferee gives written notice of the defects to the manufacturer at the manufacturer’s business address. The manufacturer shall take such action as deemed necessary by the Arkansas Manufactured Home Commission under the code.

(c) The warranty shall be in addition to, and not in derogation of, all other rights and privileges which the buyer may have under any other law or instrument. The manufacturer shall not require the buyer to waive his or her rights under this chapter, and any waiver shall be deemed contrary to public policy and shall be unenforceable and void.

History. Acts 1977, No. 419, § 8; 1981, No. 533, § 8; A.S.A. 1947, § 82-3022.

20-25-111. Reports.

All manufacturers, distributors, and retailers in this state shall make such reports and provide the Secretary of the Department of Housing and Urban Development such reports and information as the secretary may require pursuant to Title VI of Pub. L. No. 93-383.

History. Acts 1977, No. 419, § 3; 1981, No. 533, § 3; A.S.A. 1947, § 82-3017; Acts 2001, No. 1067, § 6.

Amendments. The 2001 amendment substituted “retailers” for “dealers,” and “to Title VI of Pub. L. 93-383” for “to

section 614 of Title VI of Public Law 93-383.”

U.S. Code. Section 614 of Title VI of Public Law 93-383, referred to in this section, is codified as 42 U.S.C. § 5413.

20-25-112. Disposition of funds.

All fees collected by the Director of the Arkansas Manufactured Home Commission under this chapter shall be deposited into the State Treasury. The Treasurer of State shall credit the amount paid into a special fund to be designated the “Manufactured Home Standards Fund” from which appropriations shall be made for the administration of this chapter.

History. Acts 1977, No. 419, § 9; 1981, No. 533, § 9; A.S.A. 1947, § 82-3023.

20-25-113. Purchase agreement.

(a) All manufactured home retailers shall be required to provide a written purchase agreement to the purchaser of each new manufactured home sold in the State of Arkansas.

(b) Each written purchase agreement issued by a manufactured home retailer upon the purchase of a new manufactured home shall include, but not be limited to:

(1) The make, model, and gross purchase price of the new manufactured home;

(2) Options or material upgrades which influence the purchase price of the home;

(3) Transportation and delivery arrangements, if applicable; and

(4) Installation, set-up, and anchoring arrangements, if applicable.

(c) A knowing violation of subsection (a) of this section shall constitute an unfair or deceptive act or practice as defined by the Deceptive Trade Practices Act, § 4-88-101 et seq., and shall be subject to all

remedies, penalties, and authority granted to the Attorney General under the Deceptive Trade Practices Act, § 4-88-101 et seq. This section shall not create a private right of action, but this section shall not preclude any new manufactured home purchaser from availing himself or herself of other legal or administrative remedies provided by other laws.

History. Acts 1997, No. 1220, § 1; 2001, No. 1067, § 7.

A.C.R.C. Notes. References to “this chapter” in §§ 20-25-101 to 20-25-112 may not apply to this section which was enacted subsequently.

Amendments. The 2001 amendment, in (a), substituted “retailers” for “dealers” and “(10)” for “(4)”; substituted “retailer” for “dealer” in the introductory language of (b); and inserted “or herself” in (c).

CHAPTER 26
PUBLIC LODGING

SUBCHAPTER.

- 1. GENERAL PROVISIONS. [RESERVED.]
- 2. REGISTRATION OF GUESTS.
- 3. PROPERTY OF GUESTS.
- 4. HEALTH AND SAFETY REQUIREMENTS.

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

SUBCHAPTER 2 — REGISTRATION OF GUESTS

SECTION.

- 20-26-201. Definition.
- 20-26-202. State Board of Health — Duties.
- 20-26-203. Unlawful acts.

SECTION.

- 20-26-204. Penalties.
- 20-26-205. Enforcement.
- 20-26-206. Guest register required.

Effective Dates. Acts 1945, No. 110, § 8: approved Feb. 27, 1945. Emergency clause provided: “It is ascertained that by reason of the inadequacy of the present laws enacted for the regulation and control of tourist camps, hotels and rooming houses, and the abnormal conditions re-

sulting from the war, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety it shall take effect and be in force from and after its passage.”

RESEARCH REFERENCES

- Am. Jur. 40A Am. Jur. 2d, Hotels, § 38.
- C.J.S. 43A C.J.S., Inns, § 12.

20-26-201. Definition.

- (a) As used in this subchapter, “tourist camp” means:

(1) Any place where:

(A) Buildings or tents are maintained for hire to and used by transient guests; and

(B) Free encampment is permitted to transients for the purpose of securing their trade; and

(2) Any tract of land where space is rented or offered for rent to transients.

(b) As used in this subchapter, "tourist camp" includes an auto camp, trailer camp, motel, and tourist court.

History. Acts 1945, No. 110, § 1;
A.S.A. 1947, § 71-1101.

20-26-202. State Board of Health — Duties.

The State Board of Health shall make necessary rules and regulations relating to tourist camps, hotels, or rooming houses not in conflict with any provision of this subchapter in order that:

(1) The health and safety of guests may be protected; and

(2) Tourist camps, hotels, or rooming houses may be operated in a lawful manner.

History. Acts 1945, No. 110, § 3;
A.S.A. 1947, § 71-1103.

20-26-203. Unlawful acts.

(a) It shall be unlawful for any person seeking to become a guest of any tourist camp, hotel, or rooming house to:

(1) Register or permit himself or herself to be registered under an assumed name;

(2) Falsely represent himself or herself as the spouse of any other guest or person seeking to become a guest;

(3) Register or permit himself or herself to be registered under a false address; or

(4) Register or permit to be registered a false automobile license designation.

(b) It shall be unlawful for any operator of a tourist camp, hotel, or rooming house, or any employee of the operator to:

(1) Accept as a guest any person without requiring a full registration as provided in § 20-26-206; or

(2) Knowingly accept as a guest a person who has registered under a false name, who has registered with another under a false representation as to their relationship, or who has falsely represented the current license designation of his or her automobile.

History. Acts 1945, No. 110, § 5;
A.S.A. 1947, § 71-1105.

CASE NOTES

Hotel Operator.

A hotel operator who knowingly accepts as a guest a person who registers under a false name or falsely represents his rela-

tionship to other guests is guilty of a violation of this statute. *Philpott v. Ft. Smith*, 211 Ark. 1039, 204 S.W.2d 475 (1947).

20-26-204. Penalties.

Any person violating any provision of this subchapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500) or by imprisonment in the county jail for a period not exceeding three (3) months, or by both fine and imprisonment.

History. Acts 1945, No. 110, § 6;
A.S.A. 1947, § 71-1106.

20-26-205. Enforcement.

The Division of Health of the Department of Health and Human Services and the Department of Arkansas State Police are required to assist in the enforcement of this subchapter and of any rules and regulations promulgated by the State Board of Health relating to tourist camps, hotels, and rooming houses.

History. Acts 1945, No. 110, § 4;
A.S.A. 1947, § 71-1104.

20-26-206. Guest register required.

(a) Every person operating a tourist camp, hotel, or rooming house shall provide and keep a register in which shall be entered the name and address of every guest to whom accommodations are hired or given.

(b) If a guest is traveling by automobile, the license number and state designation shall be registered.

History. Acts 1945, No. 110, § 2;
A.S.A. 1947, § 71-1102.

SUBCHAPTER 3 — PROPERTY OF GUESTS

SECTION.

- 20-26-301. Duty of guest.
- 20-26-302. Liability of proprietor.
- 20-26-303. Nature of liability — Monetary limits.
- 20-26-304. Baggage and other property of potential or past guests.

SECTION.

- 20-26-305. Lien on guest baggage and other property.
- 20-26-306. Disposition of proceeds in excess of lien.

Effective Dates. Acts 1913, No. 217, § 4; Mar. 29, 1913. Emergency clause provided: "Whereas, an emergency exists this

Act shall take effect and be in force from and after its passage and approval."

RESEARCH REFERENCES

ALR. Liability of hotel or motel operator for guest's loss of money from room by theft or robbery committed by person other than defendant's servant. 28 ALR 4th 120.

Am. Jur. 40A Am. Jur. 2d, Hotels, § 64 and § 130 et seq.

C.J.S. 43A C.J.S., Inns, § 58 et seq.

20-26-301. Duty of guest.

It shall be the duty of every guest and of everyone intending to be a guest of any hotel in this state, upon delivering to the proprietor of the hotel, or to his or her servants, any baggage or other articles of property of the guest for safekeeping elsewhere than to the room assigned to the guest to demand, and of the hotel proprietor to give, a check or receipt therefor, to evidence the fact of the delivery.

History. Acts 1913, No. 217, § 2a; C. & M. Dig., § 5566; Pope's Dig., § 7204; A.S.A. 1947, § 71-1109.

CASE NOTES

Cited: *Huckins Hotels v. Smith*, 151 Ark. 167, 325 S.W. 787 (1921); *Hackney v. Southwest Hotels, Inc.*, 210 Ark. 234, 195 S.W.2d 55 (1946).

20-26-302. Liability of proprietor.

(a) No hotel proprietor shall be liable for the loss of or injury to baggage or other articles of property of his or her guest, unless the baggage or other articles of property shall have been actually delivered by the guest to the hotel proprietor or to his or her servants for safekeeping, or unless the loss or injury occurred through the negligence of the hotel proprietor, or by his or her servants or employees in the hotel.

(b) No innkeeper or hotelkeeper, whether individual, partnership, or corporation, who constantly has in his or her inn or hotel a metal safe or suitable vault in good order, and fit for the custody of money, bank notes, jewelry, articles of gold and silver, precious stones, personal ornaments, railroad mileage books or tickets, negotiable or valuable papers, and bullion, and who keeps on the doors of the sleeping rooms used by guests suitable locks or bolts, and on the transoms and windows of the rooms suitable fastenings, and who keeps a copy of this section printed in distinct type constantly and conspicuously posted in not less than ten (10) conspicuous places in the hotel or inn, shall be liable for the loss or injury suffered by any guest unless the guest has offered to deliver the baggage or other articles of property to the innkeeper or

hotelkeeper for custody in the metal safe or vault, and the innkeeper or hotelkeeper has omitted or refused to take it and deposit it in the safe or vault for custody, and to give the guest a receipt therefor.

(c) The keeper of any inn or hotel shall not be obliged to receive from any one (1) guest for deposit in a safe or vault any property hereinbefore described exceeding a total value of three hundred dollars (\$300) and shall not be liable for any excess of the property, whether received or not.

(d) However, an innkeeper or hotelkeeper may, by special arrangement with a guest, receive for deposit in a safe or vault any property upon such terms as they may agree to in writing. Every innkeeper or hotelkeeper shall be liable for loss of these enumerated articles of a guest in his or her inn or hotel after the articles have been accepted for deposit if the loss was caused by the theft or negligence of the innkeeper, hotelkeeper, or any of their servants.

History. Acts 1913, No. 217, §§ 1, 1a, Dig., §§ 7202-7204; A.S.A. 1947, §§ 71-2a; C. & M. Dig., §§ 5564-5566; Pope's 1107 — 71-1109.

CASE NOTES

ANALYSIS

Applicability.

Checked property.

Defenses.

Duty of care.

Evidence.

Guests.

Innkeeper.

Special arrangements.

Value limitation.

Applicability.

Subsection (b) is not applicable to a bathhouse operated under the same roof but apart from the hotel where the keeper furnished lockers to bathers for their valuables. *New York Hotel Co. v. Palmer*, 158 Ark. 598, 251 S.W. 34 (1923).

Subsection (b) has no application to the loss of an automobile. *Andrews v. Southwestern Hotel Co.*, 184 Ark. 982, 44 S.W.2d 675 (1931).

Where a guest left a camera with a hotel for safekeeping elsewhere than in his room and received a check therefor, the hotelkeeper's liability to the guest was covered by subsection (a). *Hackney v. Southwest Hotels, Inc.*, 210 Ark. 234, 195 S.W.2d 55 (1946).

The limitation of liability provided for in subsection (b) has no application to cameras. *Hackney v. Southwest Hotels, Inc.*, 210 Ark. 234, 195 S.W.2d 55 (1946).

Checked Property.

As to property falling within subsection (a), the innkeeper is liable as a bailee for hire for the actual value of the checked property. *Hackney v. Southwest Hotels, Inc.*, 210 Ark. 234, 195 S.W.2d 55 (1946).

Liability under subsection (a) is not limited by §§ 20-26-303 and 20-26-304. *Hackney v. Southwest Hotels, Inc.*, 210 Ark. 234, 195 S.W.2d 55 (1946).

Defenses.

Contributory negligence is a defense in an action by guest against hotel for loss of goods which were placed in hotel's care. *Miller v. Pine Bluff Hotel Co.*, 286 F.2d 34 (8th Cir. 1961).

Duty of Care.

Where a traveler did not become a guest of the hotel, but left his baggage with the hotel porter, hotel was a gratuitous bailee and only bound to the use of slight care in protecting the property and was responsible for its loss only in case of gross neglect. *Baker v. Bailey*, 103 Ark. 12, 145 S.W. 532 (1912) (decision under prior law).

Hotelkeeper is liable as a depository for hire and held merely to the exercise of ordinary care. *Huckins Hotels v. Smith*, 151 Ark. 167, 235 S.W. 787 (1921).

Evidence.

Evidence insufficient to require court to give instructions to the effect of special

contract between the guest and hotel regarding the care and custody of the property. *Miller v. Pine Bluff Hotel Co.*, 286 F.2d 34 (8th Cir. 1961).

Evidence sufficient to submit to the jury the question of whether or not the negligence of the guest contributed to the loss of his property. *Miller v. Pine Bluff Hotel Co.*, 286 F.2d 34 (8th Cir. 1961).

Guests.

Distinction between a boarder and a guest is made by contract; a boarder is one who contracts for board and entertainment for a definite period and for a fixed sum, while one who stays at a hotel for an indefinite period is not a boarder but a guest. *Pettit v. Thomas*, 103 Ark. 593, 148 S.W. 501 (1912) (decision under prior law).

Innkeeper.

One who received all the transient people he could get, and was ready to entertain such persons whenever they came

provided they were proper persons, was an innkeeper. *Pettit v. Thomas*, 103 Ark. 593, 148 S.W. 501 (1912) (decision under prior law).

Special Arrangements.

Though under subsection (a) hotel-keeper is liable as bailee only so long as party is a guest of the hotel, the parties may enter into a special contract for care of guest's property during his absence. *Huckins Hotels v. Smith*, 151 Ark. 167, 235 S.W. 787 (1921).

Subsection (d) is limited in its operation to the articles enumerated in subsection (b). *Hackney v. Southwest Hotels, Inc.*, 210 Ark. 234, 195 S.W.2d 55 (1946).

Value Limitation.

The \$300 limitation which appears in subsection (c) applies only where the innkeeper has complied with subsection (b). *Grimes v. M.H.M., Inc.*, 299 Ark. 560, 776 S.W.2d 336 (1989).

20-26-303. Nature of liability — Monetary limits.

The liability of the keeper of any inn or hotel, whether individual, partnership, or corporation, for loss of, or injury to, personal property placed by his or her guest under his or her care, other than that described in the preceding sections, shall be that of a depository for hire, except that in case the loss or injury is caused by fire, explosion, vehicle damage, or aircraft damage not intentionally produced by the innkeeper or his or her servants, or by acts of God, the innkeeper shall not be liable, unless the loss is intentionally or negligently caused by the innkeeper or his or her servants. In no case shall liability exceed the sum of three hundred dollars (\$300) for each trunk and its contents, one hundred dollars (\$100) for each valise and its contents, and twenty-five dollars (\$25.00) for each box, bundle, or package and its contents, so placed under his or her care, and all other miscellaneous effects including wearing apparel and personal belongings, one hundred dollars (\$100), unless he or she shall have consented in writing with the guest to assume a definite liability.

History. Acts 1913, No. 217, § 2b; C. & M. Dig., § 5567; Pope's Dig., § 7205; Acts 1975, No. 838, § 1; A.S.A. 1947, § 71-1110.

CASE NOTES

ANALYSIS

Applicability.
Common law abrogated.

Applicability.

This statute does not apply to hotel

located on Hot Springs reservation. *Arlington Hotel Co. v. Fant*, 176 Ark. 613, 4 S.W.2d 7 (1928), *aff'd*, 278 U.S. 439, 49 S. Ct. 227, 73 L. Ed. 447 (1929).

This section relates to property left in the room while the guest is out of the

room. *Hackney v. Southwest Hotels, Inc.*, 210 Ark. 234, 195 S.W.2d 55 (1946).

The limitation of liability contained in this section has no application to §§ 20-26-301 and 20-26-302(a). *Hackney v. Southwest Hotels, Inc.*, 210 Ark. 234, 195 S.W.2d 55 (1946).

This section did not apply to limit innkeeper's liability for loss of coins and jew-

elry, as such property is covered by § 20-26-302. *Grimes v. M.H.M., Inc.*, 299 Ark. 560, 776 S.W.2d 336 (1989).

Common Law Abrogated.

This section abrogated the common law rule holding hotelkeepers liable as insurers. *Turner v. Weitzel*, 136 Ark. 503, 207 S.W. 39 (1917).

20-26-304. Baggage and other property of potential or past guests.

Whenever any person shall allow his or her baggage or property to remain in any inn or hotel, after leaving it as a guest, and after the relation of innkeeper and guest between the guest and the proprietors of the inn or hotel has ceased, or shall forward it to the inn or hotel before becoming a guest thereof, and it shall be received into the inn or hotel, an innkeeper may, at his or her option, hold the baggage or property at the owner's risk.

History. Acts 1913, No. 217, § 2b; C. & 1975, No. 838, § 1; A.S.A. 1947, § 71-M. Dig., § 5567; Pope's Dig., § 7205; Acts 1110.

CASE NOTES

Cited: *Gardner v. State*, 296 Ark. 41, 754 S.W.2d 518 (1988).

20-26-305. Lien on guest baggage and other property.

(a) The keeper of any inn, hotel, rooming house, or boardinghouse, whether individual, partnership, corporation, or private home, shall have a lien on the baggage and other property in and about the inn, hotel, rooming house, boardinghouse, or private home belonging to or under the control of his or her guests or boarders for the proper charges due him or her from guests or boarders for the accommodation, board, and lodging, for all moneys paid for or advanced to them not to exceed the sum of two hundred dollars (\$200), and for other extras that are furnished at their request.

(b) An innkeeper, hotel, rooming house, or boardinghouse keeper, or owner of a private home shall have the right to detain baggage and other property until the amount of charges is paid.

(c) The baggage and other property shall be exempt from attachment or execution until the innkeeper's lien and the costs of satisfying it are satisfied.

(d) The innkeeper or hotelkeeper shall retain baggage and other property upon which he or she has a lien for a period of ninety (90) days. At the expiration of that time, if the lien is not satisfied, he or she may sell the baggage and other property at public auction, after:

(1) Giving ten (10) days' notice of the time and place of sale in a newspaper of circulation in the county where the inn or hotel is situated; and

(2) Mailing a copy of the notice addressed to the guest or boarder at the place of residence registered by him or her in the register of the inn or hotel.

History. Acts 1913, No. 217, §§ 2c, 2d; §§ 7206, 7207; Acts 1939, No. 29, § 1; C. & M. Dig., §§ 5568, 5569; Pope's Dig., A.S.A. 1947, §§ 71-1111, 71-1112.

RESEARCH REFERENCES

Ark. L. Rev. Creditors' Provisional Rights: Statutory Liens in Arkansas, 32 Remedies and Debtors' Due Process Ark. L. Rev. 185.

CASE NOTES

Cited: Gardner v. State, 296 Ark. 41, 754 S.W.2d 518 (1988).

20-26-306. Disposition of proceeds in excess of lien.

After satisfying the lien and any costs that may accrue, any residue remaining shall, on demand within six (6) months, be paid to the guest or boarder. If not so demanded within six (6) months from the date of the sale, the residue shall be deposited by the innkeeper or hotelkeeper with the treasurer of the county in which the inn or hotel is situated, together with a statement of the innkeeper's claim and the cost of enforcing it, a copy of the published notice, and of the amounts received for the goods sold at the sale. The residue shall, by the county treasurer, be credited to the general revenue fund of the county, subject to a right of the guest or boarder, or his or her representative, to reclaim at any time within three (3) years of the date of deposit with the county treasurer.

History. Acts 1913, No. 217, § 2e; C. & M. Dig., § 5570; Pope's Dig., § 7208; A.S.A. 1947, § 71-1113.

SUBCHAPTER 4 — HEALTH AND SAFETY REQUIREMENTS

SECTION.

20-26-401. Bed linens.

20-26-402. Door and window screens.

20-26-403. Toilets.

SECTION.

20-26-404. [Repealed.]

20-26-405. Vented heating.

Effective Dates. Acts 1913, No. 242, § 6: effective 60 days after passage.

Acts 1951, No. 362, § 3: Mar. 20, 1951. Emergency clause provided: "Whereas, serious injury and death have resulted from

the improper ventilation of rooms occupied by the public in tourist camps, motels and auto courts, therefore, an emergency is found to exist and this Act being necessary for the preservation of the public

peace, health and safety shall take effect and be in force from the date of its approval."

Acts 1953, No. 379, § 2: Mar. 28, 1953. Emergency clause provided: "Whereas, it would be impracticable to comply with the law as it now is, forcing many operators of tourist courts to purchase expensive heating equipment, and creating a hardship

on them, an emergency is hereby declared to exist, and this act, being necessary for the immediate preservation of the public peace, health and safety, of the citizens of the State of Arkansas, shall take effect and be in full force and effect from and after the date of its passage and approval."

RESEARCH REFERENCES

ALR. Assault by third party on guest: liability of hotel or motel operator. 28 ALR 4th 80.

Injury to guest using steps or stairs. 58 ALR 2d 1178.

Am. Jur. 40A Am. Jur. 2d, Hotels, §§ 36, 37.

C.J.S. 43A C.J.S., Inns, § 12 et seq.

20-26-401. Bed linens.

(a) It shall be the duty of every hotel or innkeeper in this state to furnish clean and fresh bed linens, unused by any other person or guest since the last laundering of the bed linens, on all beds assigned to the use of any guest or patron of the inn, or hotel, and any proprietor, lessee, manager, or agent of any inn, or hotel, or clerk in it, who shall fail or refuse to comply with the foregoing provisions and requirements shall be guilty of a misdemeanor.

(b) The proprietor, lessee, manager, agent, or clerk in charge of the operation or conduct of the inn or hotel, whenever any violations of the provisions of this section shall occur, shall be guilty of a misdemeanor, and on conviction shall be fined not less than five dollars (\$5.00) nor more than twenty-five dollars (\$25.00) or be imprisoned for a term not exceeding ten (10) days, or be punished by both fine and imprisonment.

History. Acts 1913, No. 242, § 1; C. & M. Dig., § 5559; Pope's Dig., § 7198; A.S.A. 1947, § 71-1114.

20-26-402. Door and window screens.

(a) It shall be the duty of every hotel or innkeeper in this state to properly screen with wire cloth or gauze mesh not to be more than 1-32 the doors and windows of the kitchen and dining room, and all openings therein, of the inn or hotel.

(b) Any proprietor, lessee, manager, agent, or clerk of an inn or hotel who shall fail or refuse to comply with the requirements of subsection (a) of this section shall be guilty of a violation and upon conviction shall be fined not less than five dollars (\$5.00) nor more than twenty-five dollars (\$25.00).

History. Acts 1913, No. 242, § 2; C. & M. Dig., § 5560; Pope's Dig., § 7199; A.S.A. 1947, § 71-1115; Acts 2005, No. 1994, § 123.

Amendments. The 2005 amendment rewrote (b); and deleted former (c).

20-26-403. Toilets.

(a) It shall be the duty of every manager or person in charge of the conduct of any hotel or inn in this state to keep toilet rooms used in connection with the inn or hotel and provided for the use of guests or patrons of the inn or hotel in a clean and sanitary condition.

(b) Any manager or person in charge of the operation and conduct of any inn or hotel shall be guilty of a violation and upon conviction shall be fined not less than five dollars (\$5.00) nor more than one hundred dollars (\$100) if that person shall:

(1) Permit the toilet stools provided for the use of guests or patrons to become foul or filthy or the vault thereof to become full or clogged with fecal matter; or

(2) Fail to keep the stools, seats, and floors of the toilet rooms clean and washed regularly when necessary and in no case less than one (1) time per week.

History. Acts 1913, No. 242, § 3; C. & M. Dig., § 5561; Pope's Dig., § 7200; A.S.A. 1947, § 71-1116; Acts 2005, No. 1994, § 190.

Amendments. The 2005 amendment, in (a), substituted "manager" for "keeper, manager," "toilet rooms" for "closets, toilet room, or privies" and "or patrons of the inn or hotel in a clean and" for "at, or patrons

of, the inn or hotel, in a clean"; in (b), substituted "manager" for "keeper, manager, agent" and "violation" for "misdemeanor" and inserted "nor more than one hundred dollars (\$100)"; in (b)(1), substituted "toilet stools" for "closets, toilet stools, or privies"; and, in (b)(2), substituted "toilet rooms" for "closets and privies" and "one (1) time" for "once."

20-26-404. [Repealed.]

Publisher's Notes. This section, concerning rope fire escapes, was repealed by Acts 2005, No. 916, § 1. The section was

derived from Acts 1913, No. 242, § 4; C. & M. Dig., § 5562; Pope's Dig., § 7201; A.S.A. 1947, § 71-1117.

20-26-405. Vented heating.

(a) Every person operating a tourist camp, motel, or auto court shall provide for the purpose of heating the individual rooms in the tourist camp, motel, or auto court stoves or heating units adequately vented to carry the products of combustion to the outside atmosphere.

(b)(1) Any person violating the provisions of this section shall be guilty of a violation and upon conviction shall be fined in any sum of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100).

(2) Each day of violation shall constitute a separate offense.

History. Acts 1951, No. 362, §§ 1, 2; 1953, No. 379, § 1; A.S.A. 1947, §§ 71-1118, 71-1119; Acts 2005, No. 1994, § 124.

Amendments. The 2005 amendment substituted “violation” for “misdemeanor” in (b)(1).

CASE NOTES

Cited: Sander v. Kristof, 349 F. Supp. 103 (W.D. Ark. 1972).

CHAPTER 27

MISCELLANEOUS HEALTH AND SAFETY PROVISIONS

SUBCHAPTER.

1. AMUSEMENT RIDES. [REPEALED.]
2. BEDDING.
3. BLOOD DONATIONS.
4. HOUSES OF PROSTITUTION.
5. IMPACT-RESISTANT LENSES.
6. LEAD POISONING PREVENTION.
7. PUBLIC SMOKING.
8. REFRIGERATORS, ICEBOXES, ETC.
9. SAFETY GLAZING MATERIALS.
10. REMOVAL OF ASBESTOS MATERIAL.
11. BLASTING.
12. MOBILE HOME AND TRAVEL TRAILER PARKS.
13. ARKANSAS QUARRY AND OPEN PIT MINE BLASTING CONTROL ACT.
14. CPVC PIPE.
15. BODY PIERCING, BRANDING, AND TATTOOING.
16. CHILDREN’S PRODUCT SAFETY ACT OF ARKANSAS.
17. ARKANSAS CHILD DEATH REVIEW PANEL.

RESEARCH REFERENCES

Am. Jur. 4 Am. Jur. 2d, Amuse., §§ 58, 90, 96, 100, 106.

C.J.S. 52A C.J.S., Land & Ten., § 904-908.

SUBCHAPTER 1 — AMUSEMENT RIDES

SECTION.

20-27-101 — 20-27-104. [Repealed.]

20-27-101 — 20-27-104. [Repealed.]

Publisher’s Notes. This subchapter, concerning amusement rides, was repealed by Acts 2001, No. 1365, §§ 15-18.

The subchapter was derived from the following sources:

20-27-101. Acts 1981, No. 901, § 1;

1983, No. 775, § 1; A.S.A. 1947, § 82-745;
Acts 1997, No. 560, § 1.

20-27-102. Acts 1981, No. 901, § 2;
A.S.A. 1947, § 82-746.

20-27-103. Acts 1981, No. 901, § 3;
A.S.A. 1947, § 82-747.

20-27-104. Acts 1981, No. 901, § 1;
1983, No. 775, § 1; A.S.A. 1947, § 82-745.

SUBCHAPTER 2 — BEDDING

SECTION.

20-27-201. Definitions.

20-27-202. Subchapter not applicable to
manufacture or renovation
for domestic use.

20-27-203. Act of employee deemed that
of employer.

20-27-204. Penalties.

20-27-205. Label required.

20-27-206. Removal or alteration of label.

SECTION.

20-27-207. Materials and bedding previ-
ously exposed to disease.

20-27-208. Reuse of mattresses from hos-
pitals, hotels, etc., prohib-
ited — Exception.

20-27-209. Sterilization of renovated and
remade bedding required.

20-27-210. Regulation of sterilization by
State Board of Health.

Effective Dates. Acts 1927, No. 249,
§ 15: effective 60 days after passage.

20-27-201. Definitions.

As used in this subchapter:

(1) "Bedding" means any mattress, upholstered spring, comforter, pad, cushion, or pillow designed and made for use in sleeping;

(2) "Felt" means that the materials from which the felt was made have been carded layer upon layer by a garnett or felting machine;

(3) "New" means any material which has not been used in the manufacture of another article or used for any other purpose;

(4) "Person" shall include individuals, corporations, partnerships, joint-stock companies, societies, and associations; and

(5) "Previously used" means any material which has been used in the manufacturing of another article or used for any other purpose.

History. Acts 1927, No. 249, §§ 1, 7;
Pope's Dig., §§ 6455, 6461; A.S.A. 1947,
§§ 82-716, 82-722.

20-27-202. Subchapter not applicable to manufacture or renovation for domestic use.

(a) There shall be nothing in this subchapter so construed as to prevent any individual from manufacturing, renovating, or having manufactured or renovated mattresses for his or her own home or domestic use.

(b) Any individual, firm, or corporation who shall so manufacture or renovate a mattress for another, as set out in this subchapter, shall be required to label it as provided in § 20-27-205.

History. Acts 1927, No. 249, § 11; Pope's Dig., § 6465; A.S.A. 1947, § 82-726.

20-27-203. Act of employee deemed that of employer.

When construing and enforcing this subchapter, the act, omission, or failure of any officer, agent, or other person acting for, or employed by, any individual, corporation, partnership, joint stock company, society, or association, within the scope of his or her employment or office, shall in every case be also deemed the act, omission, or failure of the individual, corporation, partnership, joint-stock company, society, or association as well as that of the person.

History. Acts 1927, No. 249, § 1; Pope's Dig., § 6455; A.S.A. 1947, § 82-716.

20-27-204. Penalties.

(a) Any person, firm, or corporation who shall fail to comply with any of the provisions of this subchapter shall be guilty of a violation of this subchapter. Each mattress manufactured, remade, renovated, sold, offered for sale, delivered, consigned, or possessed with an intent to sell, offer for sale, deliver, or consign contrary to this subchapter shall be deemed a separate offense.

(b) Every person who shall be found guilty of a violation of the provisions of this subchapter shall be subject to a fine of not less than twenty-five dollars (\$25.00) nor more than two hundred fifty dollars (\$250) or not less than thirty (30) days nor more than ninety (90) days in prison, or both, as the court may deem proper.

History. Acts 1927, No. 249, §§ 13, 14; Pope's Dig., §§ 6467, 6468; A.S.A. 1947, §§ 82-728, 82-729.

20-27-205. Label required.

No person shall sell, offer for sale, deliver, consign for sale, or have in his or her possession with intent to sell, offer for sale, deliver, or consign for sale any article of bedding unless the bedding is labeled as follows:

(1)(A) Upon each of the articles of bedding, there shall be securely sewed upon the outside thereof a label upon which shall be legibly written or printed, in the English language, the names of the materials used as the filling of the article of bedding.

(B) If all the material used as the filling of the article of bedding shall not have been previously used, the words "manufactured of new material" shall appear upon the label together with the name and address of the maker of the bedding.

(C) If any of the material used in the making or remaking of the article of bedding shall have been previously used, the words "manufactured of previously used material" or "remade of previously used

materials”, as the case may be, shall appear upon the label, together with the name and address of the maker thereof and also a description of the material used in the filling of the article of bedding.

(D) Any article of bedding not remade but which has been used shall be labeled “second-hand”;

(2) The label required by this section shall be muslin or linen and not less than two inches by three inches (2" x 3") in size;

(3) The statement required under this section shall be in the form as follows:

Manufactured of new material
Materials used in filling
.....
.....
.....

Made by
Address

(4) The words “manufactured of new material” or “remade of previously used material”, “second-hand”, or “materials used in filling not known”, together with the description of the material used as the filling of an article of bedding shall be in letters not less than one-eighth inch (1/8") in height;

(5) The sewing of one (1) edge of the label securely into an outside seam of any article of bedding shall be deemed a compliance with that portion of the subchapter requiring that the label be securely sewed upon the article. This label shall contain all the statements required by this subchapter and shall be securely sewed to the ticking or cover of every article of bedding to be manufactured before the filling material has been placed inside the ticking or cover; and

(6) No term or description likely to mislead shall be used on any label required by this subchapter in the description of the materials used in the filling of any article of bedding.

History. Acts 1927, No. 249, § 5;
Pope’s Dig., § 6459; A.S.A. 1947, § 82-720.

20-27-206. Removal or alteration of label.

(a) Any person other than a purchaser for his or her own use who shall remove, deface, alter, or shall cause to be removed, defaced, or altered any label upon any article of bedding so labeled under the provisions of this subchapter shall be guilty of a violation thereof.

(b) It shall be unlawful for any owner, his or her employees, or servants of any hostelry, hotel, rooming house, or boarding house operated for profit to remove or cause to be removed from any mattress purchased for the use in their place of business after June 9, 1927, any label attached thereto.

History. Acts 1927, No. 249, §§ 6, 9; Pope's Dig., §§ 6460, 6463; A.S.A. 1947, §§ 82-721, 82-724.

20-27-207. Materials and bedding previously exposed to disease.

(a) No person shall sell, offer for sale, deliver, or consign for sale or have in his or her possession with intent to sell, deliver, or consign for sale any article of bedding that has been used by or about any person having an infectious or contagious disease.

(b) No person shall use in the making or remaking of any article of bedding, as defined in this subchapter, any material of any kind that has been used by or about any person having an infectious or contagious disease or which has formed a part of any article of bedding which has been so used.

History. Acts 1927, No. 249, §§ 2, 3; Pope's Dig., §§ 6456, 6457; A.S.A. 1947, §§ 82-717, 82-718.

20-27-208. Reuse of mattresses from hospitals, hotels, etc., prohibited — Exception.

(a) It shall be unlawful and punishable by the provisions of this subchapter for any person, firm, or corporation, or their agents, to use or cause to be used in the manufacture or renovation of mattresses materials of any description, in whole or part, that have been used in or about any public or private hospital or sanatorium for the treatment of any infectious or contagious disease, or materials obtained from mattresses from hotels, rooming houses, boardinghouses, and other public buildings where mattresses have been used for their original purpose.

(b) This section shall not prevent the use of materials as prohibited in § 20-27-209 when they have been thoroughly sterilized by a method of sterilization approved or adopted by the State Board of Health. In that event, the mattress shall be labeled as indicated in § 20-27-205, as may apply.

History. Acts 1927, No. 249, § 10; Pope's Dig., § 6464; A.S.A. 1947, § 82-725.

20-27-209. Sterilization of renovated and remade bedding required.

(a) No person shall remake or renovate any article of bedding unless all the material to be used in the remade or renovated bedding shall first be thoroughly sterilized and disinfected by a process approved by the Director of the Division of Health of the Department of Health and Human Services.

(b) Any person who receives bedding to be renovated shall attach to each article of bedding, at the time of its receipt, a tag upon which has

been legibly written the name and address of the owner of the bedding and the date it was received for renovation.

(c) No person shall use in the making of bedding any previously used material unless the material has been sterilized and disinfected by a process approved by the Director of the Division of Health of the Department of Health and Human Services.

History. Acts 1927, No. 249, § 4; Pope's Dig., § 6458; A.S.A. 1947, § 82-719.

20-27-210. Regulation of sterilization by State Board of Health.

(a) It is made the duty of the State Board of Health to promulgate and publish rules and regulations prescribing the method of sterilization that may be used by those engaged in the manufacturing of mattresses and bedding or in the renovation thereof.

(b) All persons, firms, or corporations who shall conform to the regulations as promulgated by the board, as directed, shall be deemed as complying with the law.

History. Acts 1927, No. 249, § 12; Pope's Dig., § 6466; A.S.A. 1947, § 82-727.

SUBCHAPTER 3 — BLOOD DONATIONS

SECTION.

20-27-301. Donation by minors.

20-27-302. Testing for blood-borne diseases.

Effective Dates. Acts 1971, No. 44, § 3: Feb. 4, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law requires the parental consent for a person between the ages of 18 years and 21 years to donate blood to a blood bank or hospital; that such requirement is unduly restrictive and is not in accordance with the trend to give young adults greater authority and responsibility; and that this Act is immediately necessary to correct this situation. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and

safety, shall be in effect from the date of its passage and approval."

Acts 1977, No. 449, § 2: Mar. 17, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law requires the parental consent of a person between the ages of seventeen (17) and eighteen (18) years to donate blood to a blood bank or hospital; that such requirement is unduly restrictive and not in accordance with the trend to give youngsters greater responsibility; that there is no medical justification for such restriction; and that this Act is immediately necessary to correct this situation in order to enable minors seven-

teen (17) years of age to donate blood critically needed for the health and welfare of the ill people of this State. Therefore, an emergency is hereby declared to exist, and this being necessary for the

immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

20-27-301. Donation by minors.

(a) Any minor who has reached seventeen (17) years of age may act as a blood donor to any nonprofit blood bank or any licensed hospital without consideration.

(b) The consent of the minor shall not be subject to disaffirmance because of the minority of the donor. The consent of the parent or guardian of the minor shall not be necessary to authorize the taking of blood from the minor.

(c) However, nothing in this section shall be construed to relieve any blood bank or hospital or its agents or employees from civil liability for any negligence in taking the blood of a minor.

History. Acts 1971, No. 44, § 1; 1977, No. 449, § 1; A.S.A. 1947, § 82-1606.

20-27-302. Testing for blood-borne diseases.

(a) Any individual or company that collects blood products, including, but not limited to, red cells, white cells, platelets, clotting factors, immunoglobulins, or plasma for the purpose of resale or distribution used in the treatment of human disease, shall:

(1) Inform the donor that his or her blood will be tested for the presence of human immunodeficiency virus antigens or antibodies (HIV-1), causative agents of acquired immunodeficiency syndrome (AIDS) and other blood-borne diseases and shall inform the donor of the test results. In addition, if the donor's blood tests are found to be reactive, the donor's name shall be made available to the Division of Health of the Department of Health and Human Services for the purpose of contact tracing and partner notification and to donor referral registries;

(2) Use no donations of blood products or plasma until the donor has been found to be free of evidence of the HIV infection by a United States Food and Drug Administration-approved screening test such as the Enzyme-Linked Immunosorbent Assay (ELISA) test; and

(3) Repeat any screening test that is found to be positive. If the screening test is repeatedly positive, a confirmatory test such as the Western Blot, Immunofluorescence Assay (IFA) or any other confirmatory test subsequently approved by the United States Food and Drug Administration shall be performed. If confirmatory testing is positive for evidence of HIV infection, the donor shall be informed and his or her blood shall not be accepted.

(b) Donors who test positive shall be encouraged to seek medical consultation from their physician or local public health facility.

History. Acts 1991, No. 575, § 1.

SUBCHAPTER 4 — HOUSES OF PROSTITUTION

SECTION.

20-27-401. Public nuisance.

Effective Dates. Acts 1941, No. 361, §§ 4, 5: approved Mar. 26, 1941. Emergency clause provided: "Sec. 4. It appearing that houses of ill fame and prostitution are becoming more frequent on our County Highways and that great harm is occurring to the public morals of our various Counties.

"Sec. 5. An emergency is hereby declared, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in force and effect from and after its passage."

RESEARCH REFERENCES

Am. Jur. 24 Am. Jur. 2d, Disord. H., § 1 et seq.

C.J.S. 27 C.J.S., Disord. H., § 1 et seq.

20-27-401. Public nuisance.

The operation of a house of ill fame, a bawdy house, a disorderly house, or any house for the purpose of assignation or prostitution in this state to which men and women resort for the purpose of prostitution or lewdness is declared to be a public nuisance, detrimental to public morals, and may be abated under the present provisions of law for the suppression of public nuisances.

History. Acts 1941, No. 361, § 3; A.S.A. 1947, § 41-3051.

Cross References. Abatement of nuisances by municipalities, § 14-54-103.

CASE NOTES

Theater.

A motion-picture theater showing obscene films is not a nuisance under this

section. *Southland Theaters, Inc. v. State ex rel. Tucker*, 254 Ark. 639, 495 S.W.2d 148 (1973).

SUBCHAPTER 5 — IMPACT-RESISTANT LENSES

SECTION.

20-27-501. Label required.

20-27-502. Standards.

Cross References. Ophthalmic Dispensing Act, § 17-89-101 et seq.

20-27-501. Label required.

The sellers of all eyeglasses sold in the State of Arkansas shall furnish at the time of sale or delivery thereof a card, sticker, or tag indicating to the purchaser or receiver of the eyeglasses either that the lenses in the glasses are impact resistant or that the lenses are nonimpact resistant.

History. Acts 1969, No. 225, § 1;
A.S.A. 1947, § 72-820.

20-27-502. Standards.

Eyeglasses sold or prescribed in this state as impact-resistant eyeglasses shall meet the following minimum standards:

(1) If the lenses of the eyeglasses are made of glass, the lenses shall be capable of withstanding the impact of a five-eighths inch ($\frac{5}{8}$ ") steel ball dropped from a height of fifty inches (50");

(2)(A) When plastic materials are used in the construction of ophthalmic lenses or frames, the material shall be slow burning.

(B) Cellulose nitrate or materials having flammability characteristics approximating those of cellulose nitrate shall not be used.

(C) Flammability of the materials shall be no greater than that exhibited by cellulose acetate or acetate butyrate.

History. Acts 1969, No. 225, § 2;
A.S.A. 1947, § 72-821.

SUBCHAPTER 6 — LEAD POISONING PREVENTION

SECTION.

20-27-601. Purpose.

20-27-602. Definitions.

20-27-603. Political subdivision laws permitted.

SECTION.

20-27-604. Injunction.

20-27-605. Lead Poisoning Prevention and Control Agency — Director.

SECTION.

20-27-606. Search warrant required for inspection — Exception.

20-27-607. Notification of hazard — Abatement.

SECTION.

20-27-608. Retaliatory action prohibited.

20-27-601. Purpose.

The purpose of this subchapter is to provide for the prevention, screening, diagnosis, and treatment of lead poisoning, including elimination of the sources of the poisoning through such research, educational, epidemiological, and clinical activities as may be necessary.

History. Acts 1979, No. 896, § 1;
A.S.A. 1947, § 82-737.

20-27-602. Definitions.

As used in this subchapter:

(1) "Agency" means the Division of Health of the Department of Health and Human Services;

(2) "Board" means the State Board of Health;

(3) "Director" means the Director of the Division of Health of the Department of Health and Human Services or his or her authorized delegate or representative;

(4) "Dwelling" means a structure, all or part of which is designed or used for or in connection with human habitation, including garages, carports, sheds, fences, and gates;

(5) "Dwelling unit" means any room, group of rooms, or other interior area of a structure designed or used for human habitation;

(6) "Exposed surface" means all interior surfaces of a dwelling or dwelling unit and those exterior surfaces which are readily accessible to children under six (6) years of age, such as stairs, porches, railings, windows, doors, facings, sills, and siding;

(7) "Lead-bearing substance" means any paint, lacquer, glaze, or other applied surface coatings, putty, plaster, structural material, or similar substance which contains more than five-tenths of one percent (0.5%) lead metal by weight in the total nonvolatile contents of the substance, or any such substance containing an amount of lead metal not to exceed five-tenths of one percent (0.5%) as hereafter may be established by federal law or regulation;

(8) "Occupant" or "tenant" means any person living, sleeping, cooking, eating in, or having actual possession of a dwelling or dwelling unit;

(9) "Owner" means any person who alone, jointly, or severally with others has legal title to, charge, care, or control of any dwelling or dwelling unit as owner, as agent of the owner, or as executor, administrator, trustee, or guardian of the estate of the owner; and

(10) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency,

political subdivision, or combination thereof or any agent or representative of the foregoing.

History. Acts 1979, No. 896, § 2;
A.S.A. 1947, § 82-738.

20-27-603. Political subdivision laws permitted.

This subchapter shall not prohibit any political subdivision from enacting and enforcing ordinances or laws for the prevention and control of lead poisoning which provide the same or more restrictive provisions as this subchapter or the rules and regulations promulgated pursuant to this subchapter.

History. Acts 1979, No. 896, § 8;
A.S.A. 1947, § 82-744.

20-27-604. Injunction.

When in the judgment of the Division of Health of the Department of Health and Human Services any person has engaged in or is about to engage in any acts or practices of commission or omission which constitute or will constitute a violation of any provision of this subchapter or any rule, regulation, or order issued under this subchapter, the Attorney General, upon written notice thereof by the agency, shall make application to the court of competent jurisdiction for an order enjoining the acts or practices or for an order directing compliance. Upon a showing by the agency that the person has engaged in or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

History. Acts 1979, No. 896, § 7;
A.S.A. 1947, § 82-743.

20-27-605. Lead Poisoning Prevention and Control Agency — Director.

(a) The Division of Health of the Department of Health and Human Services is designated as the Lead Poisoning Prevention and Control Agency.

(b) The Director of the Division of Health of the Department of Health and Human Services shall perform the functions vested in the agency pursuant to this subchapter.

(c) In discharging its function in lead poisoning prevention and control, the agency may:

(1) Develop a screening program to identify children under six (6) years of age with lead poisoning or potential lead poisoning;

(2) Report immediately all actual or suspected cases of lead poisoning found in the screening program to the parent or legal guardian;

(3) Follow up the positive screening results by referring children with extremely high blood lead levels for clinical evaluations or treatment and retest children with minimal elevated levels within three (3) months;

(4) Investigate the lead hazard in the places of residence and frequent occupancy of children with elevated blood lead readings;

(5) Notify the owner and occupant in writing of the lead hazard and, if necessary and after a hearing pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., require discontinuance within thirty (30) days of a paint condition conducive to lead poisoning in any designated dwelling;

(6) Prescribe in written notice to the owner and the occupant the method of discontinuance of the lead paint condition conducive to lead poisoning;

(7) Advise, consult, and cooperate with other agencies of the state, the federal government, municipal agencies, other state and interstate agencies, political subdivisions, and other private or public groups concerned with the prevention and control of lead poisoning;

(8) Collect and disseminate information relating to the prevention and control of lead poisoning;

(9) Formulate, adopt, promulgate, amend, and repeal rules and regulations for the prevention and control of lead poisoning; and

(10) Issue such orders or modifications thereof as may be necessary in connection with proceedings under this subchapter.

History. Acts 1979, No. 896, § 3;
A.S.A. 1947, § 82-739.

20-27-606. Search warrant required for inspection — Exception.

(a) For reasonable cause, the Director of the Division of Health of the Department of Health and Human Services may obtain from any court of record in the county where a dwelling or other property is located a search warrant permitting the director's designee to enter at all reasonable times upon any private or public property, including dwellings or dwelling units. Entry may be made for the purpose of determining whether or not a lead poisoning hazard or potential hazard exists, including the collection of samples of laboratory analyses, and to determine abatement compliance. However, entry onto or into any property under the jurisdiction and control of the federal government shall be effected only with the concurrence of the federal government or its designated representative.

(b) Entry without a warrant may be made by an agent of this agency if he or she reasonably believes that exigent circumstances exist posing a clear threat to the health of any person.

History. Acts 1979, No. 896, § 4;
A.S.A. 1947, § 82-740.

20-27-607. Notification of hazard — Abatement.

(a) After completion of an inspection or investigation, the Director of the Division of Health of the Department of Health and Human Services or his or her designee shall notify the owner and tenant of his or her findings and, in the event any lead hazard was found, the notification shall contain instructions pertaining to abatement as prescribed by this subchapter and rules and regulations promulgated pursuant to this subchapter.

(b) If the lead hazard has not been properly abated within thirty (30) days after receipt of notification, the owner shall be in violation of this subchapter.

History. Acts 1979, No. 896, § 5;
A.S.A. 1947, § 82-741.

20-27-608. Retaliatory action prohibited.

(a) After receiving notice of the presence of lead hazards, no owner of any dwelling or dwelling unit shall engage in retaliatory action against an occupant of the affected dwelling or dwelling unit especially as pertains to eviction or threat of eviction because of the presence of lead hazards.

(b) This section is not intended to preclude an owner from finding other suitable housing for and in agreement with the occupant if such action is determined to be in the best interest of the occupant during the hazard abatement period.

History. Acts 1979, No. 896, § 6;
A.S.A. 1947, § 82-742.

SUBCHAPTER 7 — PUBLIC SMOKING

SECTION.

- 20-27-701. Public policy.
- 20-27-702. Penalty.
- 20-27-703. Public smoking prohibited —
Exceptions.
- 20-27-704. Findings.
- 20-27-705. Definitions.

SECTION.

- 20-27-706. Prohibition of smoking at
medical facilities.
- 20-27-707. Exception.
- 20-27-708. Penalty.
- 20-27-709. Notice at medical facilities.

Effective Dates. Acts 2005 No. 134, § 2, provided: "This act shall become effective on October 1, 2005."

RESEARCH REFERENCES

ALR. Employer's liability to employee for failure to provide work environment free from tobacco smoke. 63 ALR 4th 1021. Validity, construction and application of nonsmoking regulations. 65 ALR 4th 1205. **Am. Jur.** 39 Am. Jur. 2d, Health, §§ 49, 50.

20-27-701. Public policy.

(a) Information available to the General Assembly based upon scientific research data has shown that nonsmokers often receive damage to their health from the smoking of tobacco by others.

(b) It is therefore declared to be the public policy of the State of Arkansas that the rights of nonsmokers be protected in the manner provided in this subchapter.

History. Acts 1977, No. 728, § 1; A.S.A. 1947, § 82-3701.

Cross References. Smoking in day care centers, § 20-78-217.

20-27-702. Penalty.

Any person violating this subchapter shall be guilty of a violation and upon conviction shall be punished by a fine of not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100).

History. Acts 1977, No. 728, § 3; A.S.A. 1947, § 82-3703; Acts 2005, No. 1994, § 125.

Amendments. The 2005 amendment substituted "violation" for "misdemeanor."

20-27-703. Public smoking prohibited — Exceptions.

(a) Smoking of tobacco or products containing tobacco in any form in a doctor's or dentist's waiting room, in hospital corridors, in nurses' stations in hospitals and clinics, in all hospital rooms, except private patient rooms in this state, and on school buses is prohibited.

(b) This subchapter shall not prohibit smoking in any of the areas described in subsection (a) of this section if the smoking is assigned to areas designated as smoking areas.

(c) This subchapter shall not apply to hotels, motels, and restaurants.

History. Acts 1977, No. 728, § 2; A.S.A. 1947, § 82-3702.

20-27-704. Findings.

The General Assembly finds that:

(1) Direct smoking of tobacco and indirect smoking of tobacco through inhaling the smoke of those who are smoking nearby are major causes of preventable diseases and death; and

(2) Prohibiting tobacco use in medical facilities will decrease the use of tobacco and exposure to harm from tobacco.

History. Acts 2005, No. 134, § 1.

20-27-705. Definitions.

For purposes of §§ 20-27-704 — 20-27-708:

(1) “Grounds” means the buildings in and on which medical facilities operate, together with all property owned by a medical facility that is contiguous to the buildings in which medical services are provided;

(2)(A) “Medical facilities” means hospitals, including both inpatient and outpatient services, as well as hospital-owned and operated ambulatory surgery centers and hospital-owned and operated free-standing medical clinics.

(B) “Medical facilities” does not include psychiatric hospitals as defined by the Division of Health of the Department of Health and Human Services rules for hospitals and related institutions; and

(3) “Tobacco” means cigars, cigarettes, pipes, or other tobacco-smoking devices.

History. Acts 2005, No. 134, § 1.

20-27-706. Prohibition of smoking at medical facilities.

(a) Smoking of tobacco is prohibited in and on the grounds of all medical facilities.

(b)(1) Each medical facility shall request any person who violates subsection (a) of this section to desist.

(2) If the violation continues, the medical facility may report the violation to the appropriate law enforcement agency.

History. Acts 2005, No. 134, § 1.

20-27-707. Exception.

(a) If a treating physician determines that an inpatient’s treatment will be substantially impaired by the denial to that patient of the use of tobacco, the physician may enter a written order permitting the use of tobacco by that patient.

(b) The order shall be consistent with:

(1) The medical facility’s medical staff bylaws;

- (2) Hospital regulations; and
- (3) Local ordinances.

History. Acts 2005, No. 134, § 1.

20-27-708. Penalty.

A violation of § 20-27-706 is a Class C misdemeanor.

History. Acts 2005, No. 134, § 1.

20-27-709. Notice at medical facilities.

(a) Each medical facility shall post signs in prominent places in its facilities and on its property to explain the prohibition of smoking under § 20-27-706.

(b)(1) Notices shall be written in English and Spanish.

(2) For a person who cannot read the signs, the prohibition of smoking in a medical facility on its grounds shall be given verbally in the appropriate language before any enforcement of the prohibition against the violator.

(c) The Division of Health of the Department of Health and Human Services may treat a violation of this section as a deficiency to be assessed against the medical facility.

History. Acts 2005, No. 134, § 1.

SUBCHAPTER 8 — REFRIGERATORS, ICEBOXES, ETC.

SECTION.

20-27-801. Unlawful to leave unattended
— Exception.

20-27-802. Inside door handles required

on certain walk-in refrigerators, etc.

20-27-801. Unlawful to leave unattended — Exception.

(a)(1) It shall be unlawful for any person, firm, or corporation to leave or permit to remain outside of any dwelling, building, or other structure or within any unoccupied or abandoned building, dwelling, or other structure under his, her, or its control in a place accessible to children any abandoned, unattended, or discarded icebox, refrigerator, or other container that has an air-tight door or lid, snaplock, or other locking device that may not be released from the inside without first removing the door or lid, snaplock, or other locking device from the icebox, refrigerator, or container.

(2) This subchapter shall not apply to reefers, refrigerator, or icer cars of any railroad or railway express agency or any other refrigerator vehicles unless the vehicles have been abandoned or discarded.

(b)(1) The Labor Safety Administrator of the Department of Labor or any of his or her deputies or inspectors shall have the right to remove the door hinges or to dismantle, if necessary, any icebox, refrigerator, or

other container that has an air-tight door or lid, snaplock, or other locking device that violates this subchapter.

(2) The administrator or any of his or her deputies or inspectors shall have the right to enter any junkyard, vacant lot, dump, yard, unoccupied or abandoned building, dwelling, or other structure or place frequented by children in order to perform duties pursuant to this section.

(c)(1) Any person, firm, or corporation that is found guilty of a violation of this section shall be guilty of a violation and upon conviction subject to a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100) for each violation.

(2) Each icebox, refrigerator, or other container abandoned in a condition contrary to this section shall be deemed a separate offense.

History. Acts 1957, No. 347, § 1; 1965, No. 44, § 1; A.S.A. 1947, § 82-730; Acts 2005, No. 1994, § 126.

Amendments. The 2005 amendment inserted “her” in (a)(1); inserted “or her” in (b)(1) and (2); and rewrote (c).

20-27-802. Inside door handles required on certain walk-in refrigerators, etc.

The Labor Safety Administrator of the Department of Labor or any of his or her deputies or inspectors may require the installation of inside door handles on any walk-in refrigerator, icebox, freezer, or door of a cold storage room where in his or her discretion the absence of inside door handles in the freezing unit may endanger the life of any employee or other authorized personnel using the unit.

History. Acts 1957, No. 347, § 2; A.S.A. 1947, § 82-731.

SUBCHAPTER 9 — SAFETY GLAZING MATERIALS

- SECTION.
20-27-901. Definitions.
20-27-902. Penalties.
20-27-903. Labeling required.

- SECTION.
20-27-904. Requirement in hazardous locations — Exceptions.
20-27-905. Nonliability of employees.

Publisher’s Notes. Acts 1973, No. 117 § 6, provided, in part, that contracts involving glazing materials entered into prior to Jan. 1, 1974, would not be affected

by the act even if performance of the contract occurred after that date.
Effective Dates. Acts 1973, No. 117, § 6: Jan. 1, 1974.

20-27-901. Definitions.

As used in this subchapter:

(1) “Fabricator” means a person who fabricates, assembles, or glazes from component parts such structures or products commonly known as sliding glass doors, entrance doors, adjacent fixed glazed panels, storm

doors, shower doors, bathtub enclosures, panels to be fixed glazed, entrance doors, or other structures to be glazed, to be used or installed in hazardous locations;

(2)(A) "Hazardous locations" means those areas in residential, commercial, and public buildings where the use of other than safety glazing materials would constitute a hazard as the Director of the Department of Labor may determine after notice and hearings as are now required by law.

(B) "Hazardous locations" shall specifically include those installations, glazed or unglazed, known as sliding glass doors, framed or unframed glass doors, and adjacent fixed glazed panels which may be mistaken for a means of ingress or egress, storm doors, shower doors, and tub enclosures whether or not the glazing in the doors, panels, or enclosures is transparent;

(3) "Installer" means those persons or concerns who or which install glazing materials or build structures containing glazing materials in hazardous locations;

(4) "Manufacturer" means a person who manufactures safety glazing material; and

(5) "Safety glazing material" means any glazing material, such as tempered glass, laminated glass, wire glass, or rigid plastic, which meets the test requirements of the American National Standards Institute Standard Z-97.1 — 1972 and which is so constructed, treated, or combined with other materials as to minimize the likelihood of cutting and piercing injuries resulting from human contact with glazing material.

History. Acts 1973, No. 117, § 1;
A.S.A. 1947, § 82-732.

20-27-902. Penalties.

(a) Any person or company violating any of the provisions of this subchapter shall be guilty of a misdemeanor.

(b) Upon conviction, the person or company shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500) or imprisoned in the county jail not more than thirty (30) days, or both fined and imprisoned.

History. Acts 1973, No. 117, § 5;
A.S.A. 1947, § 82-736.

20-27-903. Labeling required.

(a)(1) Each light of safety glazing material manufactured, distributed, imported, or sold for use in hazardous locations or installed in a hazardous location within this state shall be labeled as such by etching, sand blasting, firing of ceramic material, or pressure sensitive labels on the safety glazing material.

(2) The label shall identify the labeler, whether manufacturer, fabricator, or installer, the thickness and type of safety glazing material, and the fact that the material meets the test requirements of American National Standards Institute Standard Z-97.1 — 1972.

(3) The label shall be legible and visible after installation.

(b) Safety glazing labeling shall not be used on other than safety glazing materials.

History. Acts 1973, No. 117, § 2;
A.S.A. 1947, § 82-733.

20-27-904. Requirement in hazardous locations — Exceptions.

(a) It is unlawful in this state to knowingly sell, fabricate, assemble, glaze, install, consent to installation, or cause to be installed glazing materials other than safety glazing materials in, or for use in, any hazardous locations.

(b) This section shall not apply to the replacement of glazing materials in a residence constructed for occupancy of not more than two (2) families, which residence is in existence on January 1, 1974.

History. Acts 1973, No. 117, § 3;
A.S.A. 1947, § 82-734.

20-27-905. Nonliability of employees.

No liability under this subchapter is created for workers who are employees of a contractor, subcontractor, material supplier, or other employer responsible for compliance with this subchapter.

History. Acts 1973, No. 117, § 4;
A.S.A. 1947, § 82-735.

SUBCHAPTER 10 — REMOVAL OF ASBESTOS MATERIAL

SECTION.

20-27-1001. Purpose.

20-27-1002. Penalties.

20-27-1003. Definitions.

20-27-1004. Powers and duties of the Arkansas Department of Environmental Quality.

SECTION.

20-27-1005. Procedures.

20-27-1006. License required — Exceptions.

20-27-1007. Prohibitions.

Effective Dates. Acts 1985, No. 394, § 10: Mar. 18, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that present law does not now regulate persons engaged in the business of removing asbestos from building structures; that the danger of asbestos materials to the public health requires that persons engaged in

the business of removing such hazardous substances be qualified; that this Act would result in insuring that only qualified persons remove asbestos material from building structures and should be given effect immediately to provide protection to the public as soon as possible. Therefore, an emergency is hereby declared to exist and this Act being immedi-

ately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1997, No. 308, § 5: Feb. 28, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that the authority for the Arkansas Department of Pollution Control and Ecology to license and certify asbestos abatement contractors, asbestos abatement consultants, training providers, air monitors, contractor/supervisors, inspectors, management planners, project designers, and workers and to establish work practices and disposal requirements are necessary to protect the lives, health and welfare of the people of Arkansas. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1997, No. 309, § 7: Feb. 28, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that the authority for the Department of Pollution Control and Ecology to license and certify firms, training providers, inspectors, risk assessors, supervisors, project designers, and workers and to establish work practice standards for lead-based paint-hazard activities is nec-

essary to protect the lives, health and welfare of the people of Arkansas. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Act 2005, No. 1824, § 20: July 1, 2005. Emergency clause provided: “The General Assembly of the State of Arkansas hereby finds and determines that the decision of the Arkansas Supreme Court in *Arkansas Department of Environmental Quality v. Brighton Corp.* 352 Ark. 396, 102 S.W.3d 458 (2003), has raised questions regarding the factual proof required to establish a claim for cost recovery under the Arkansas Remedial Action Trust Fund Act and regarding the retroactivity of the statute. The General Assembly further finds and determines that the doubts raised by the decision in the Brighton case have created substantial uncertainty regarding the enforcement authority of the Arkansas Department of Environmental Quality and the rights and responsibilities of private parties under the Arkansas Remedial Action Trust Fund Act, all of which require urgent resolution. Therefore, an emergency is declared to exist; and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2005, and shall apply retroactively.”

RESEARCH REFERENCES

C.J.S. 39A C.J.S., Health & E., § 163.

20-27-1001. Purpose.

The purpose of this subchapter is to protect the public health and safety and the environment and to qualify the Arkansas Department of Environmental Quality to adopt, administer, and enforce a program for licensing training providers involved with the training of regulated asbestos professionals, for licensing asbestos abatement consultants and asbestos abatement contractors, and for certifying air monitors, contractor-supervisors, inspectors, management planners, project designers, and workers involved with demolitions, renovations, and asbestos-response actions in which regulated asbestos-containing materials are disturbed in accordance with this subchapter, the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., and regulations issued pursuant thereto.

History. Acts 1985, No. 394, § 1; A.S.A. 1947, § 82-1944; Acts 1987, No. 531, § 1; 1993, No. 817, § 1; 1997, No. 308, § 1; 1999, No. 1164, § 174.

A.C.R.C. Notes. The words “in facilities” following “asbestos-containing mate-

rials” and preceding “in accordance with” in the pre-1997 version of this section were omitted from Acts 1997, No. 308 and thus were neither included in the new version nor specifically deleted.

20-27-1002. Penalties.

(a) Any person who violates any provision of this subchapter or commits any unlawful act thereunder or who violates any regulation or order of the Arkansas Pollution Control and Ecology Commission shall be subject to the penalty provisions provided in § 8-4-103.

(b) All moneys collected as civil penalties shall be deposited into the Hazardous Substance Remedial Action Trust Fund as provided by § 8-7-509.

History. Acts 1985, No. 394, § 7; A.S.A. 1947, § 82-1950; Acts 1993, No. 817, § 6; 1999, No. 142, § 1; 2005, No. 1824, § 19.

Amendments. The 2005 amendment,

in (b), substituted “Hazardous Substance Remedial Action Trust Fund” for “Emergency Response Fund” and “§ 8-7-509” for “§ 8-7-410(b)(1).”

20-27-1003. Definitions.

As used in this subchapter:

(1) “Air monitor” means any person who collects airborne samples for analysis of asbestos fibers;

(2) “Asbestos abatement consultant” means any person or other legal entity, however organized, that acts as an agent for the owner or operator in performing demolitions, renovations, or response actions which will involve, or may involve, the removal or disturbance of asbestos-containing materials in any facility;

(3) “Asbestos abatement contractor” means any person or other legal entity, however organized, that acts as an agent for the owner or operator in performing demolitions, renovations, or response actions which will involve, or may involve, the removal or disturbance of asbestos-containing materials in any facility;

(4) “Category I nonfriable asbestos-containing material” means asbestos-containing packings, gaskets, resilient floor coverings, and asphalt roofing products containing more than one percent (1%) asbestos as determined using the method specified in Appendix E, Subpart E, 40 C.F.R. Part 763, Section 1, Polarized Light Microscopy;

(5) “Category II nonfriable asbestos-containing material” means any material excluding Category I nonfriable asbestos-containing materials containing more than one percent (1%) asbestos as determined using the methods specified in Appendix E, Subpart E, 40 C.F.R. Part 763, Section 1, Polarized Light Microscopy that when dry cannot be crumbled, pulverized, or reduced to powder by hand pressure;

(6) “Certificate” means a document issued by the Arkansas Department of Environmental Quality to any person certifying that that person has satisfactorily completed asbestos training, examination, and

other requirements established by the department to perform the duties of the following:

- (A) Air monitor;
- (B) Contractor/supervisor;
- (C) Inspector;
- (D) Management planner;
- (E) Project designer; and
- (F) Worker;

(7) "Contractor/supervisor" means any person who supervises the following activities with respect to friable asbestos-containing material in a facility:

(A) A response action other than a small-scale short-duration activity;

(B) A maintenance activity that disturbs friable asbestos-containing material other than a small-scale short-duration activity; or

(C) A response action for a major fiber-release episode;

(8) "Demolition" means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or intentional burning of a facility;

(9) "Department" means the Arkansas Department of Environmental Quality;

(10) "Director" means the Director of the Arkansas Department of Environmental Quality;

(11)(A) "Facility" means:

(i) Any institutional, commercial, public, industrial, or residential structure, installation, or building, including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative but excluding residential buildings having four (4) or fewer dwelling units;

(ii) Any ship; and

(iii) Any active or inactive waste disposal site.

(B) For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation, or building that was previously subject to this regulation is not excluded, regardless of its current use or function;

(12) "Friable asbestos materials" means any materials containing more than one percent (1%) asbestos as determined by using the method specified in Appendix E, Subpart E, 40 C.F.R. Part 763, Section 1, Polarized Light Microscopy that when dry can be crumbled, pulverized, or reduced to powder by hand pressure;

(13) "Inspector" means any person who inspects for asbestos-containing material in a facility;

(14) "License" means a document issued by the department to an asbestos abatement contractor, asbestos abatement consultant, or training provider who meets the criteria for licensing as established by the department;

(15) "Management planner" means any person who prepares management plans for a school;

(16) “Nonfriable asbestos-containing material” means any material containing more than one percent (1%) of asbestos as determined using the method specified in Appendix E, Subpart E, 40 C.F.R. Part 763, Section 1, Polarized Light Microscopy, that when dry cannot be crumbled, pulverized, or reduced to powder by hand pressure;

(17) “Owner or operator” means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both;

(18) “Project designer” means any person who designs the following activities with respect to friable asbestos-containing material in a facility:

(A) A response action other than a small-scale short-duration activity;

(B) A maintenance activity that disturbs friable asbestos-containing material other than a small-scale short-duration activity; or

(C) Response action for a major fiber-release episode;

(19) “Regulated asbestos-containing material” means:

(A) Friable asbestos material;

(B) Category I nonfriable asbestos-containing material that has become friable;

(C) Category I nonfriable asbestos-containing material that will be or has been subjected to sanding, grinding, cutting, or abrading; or

(D) Category II nonfriable asbestos-containing material that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this subchapter;

(20) “Renovation” means altering a facility or one (1) or more facility components in any way, including the stripping or removal of regulated asbestos-containing material from a facility component. Operations in which load-supporting structural members are wrecked or taken out are demolitions;

(21) “Response action” means a method, including removal, encapsulation, enclosure, repair, and operation and maintenance, that protects human health and the environment from friable asbestos-containing material;

(22) “Training provider” means any person or other legal entity, however organized, that conducts some or all of the training programs for asbestos professional disciplines which are regulated by the department; and

(23) “Worker” means any person who carries out any of the following activities with respect to friable asbestos-containing material in a facility:

(A) A response action other than a small-scale short-duration activity;

(B) A maintenance activity that disturbs friable asbestos-containing material other than a small-scale short-duration activity; or

(C) A response action for a major fiber-release episode.

History. Acts 1985, No. 394, § 2; 531, § 2; 1993, No. 817, § 2; 1997, No. A.S.A. 1947, § 82-1945; Acts 1987, No. 308, § 1; 1999, No. 1164, § 175.

20-27-1004. Powers and duties of the Arkansas Department of Environmental Quality.

The Arkansas Department of Environmental Quality shall be charged with the responsibility of administering and enforcing this subchapter and is given and charged with the following powers and duties:

(1) To require and regulate training and examinations for all disciplines certified by this subchapter and the regulations promulgated pursuant to this subchapter;

(2) To establish standards and procedures for the licensing of consultants, contractors, and training providers and to establish performance standards for the abatement of friable and nonfriable asbestos materials. The performance standards shall be as stringent as those standards adopted by the United States Environmental Protection Agency pursuant to section 112 of the Clean Air Act;

(3) To enforce regulations necessary or appropriate to the implementation of this subchapter, including taking legal action in any court of competent jurisdiction;

(4) To issue licenses and certificates to all applicants who satisfy the requirements of this subchapter and any regulations issued pursuant to this subchapter, to renew the licenses and certificates, and to suspend or revoke the licenses and certificates for cause and after notice and opportunity for hearing; and

(5) To establish annual license fees for asbestos abatement consultants, asbestos abatement contractors, and training providers, annual certification fees for air monitors, contractor/supervisors, inspectors, management planners, project designers, and workers in order to recover the costs of processing license and certificate applications and the issuance of licenses and certificates, and such other fees as are necessary to recover the costs of enforcing this subchapter.

History. Acts 1985, No. 394, § 3; A.S.A. 1947, § 82-1946; Acts 1987, No. 531, § 3; 1993, No. 817, § 3; 1997, No. 308, § 1; 1997, No. 309, § 2.

A.C.R.C. Notes. Acts 2003, No. 1615, § 20, provided: "ADEQ ASBESTOS PROGRAM. The fees collected pursuant to Arkansas Code 20-27-1004(5) shall be used by the department to fund operational expenses and to provide and train personnel to administer an asbestos program, as funding is available, including:

"(a) Personnel dedicated to issue certificates and licenses to qualified persons/companies, to perform audit of trainers,

and to regularly update the ADEQ web page providing a listing of asbestos licensed parties;

"(b) Personnel who are trained as asbestos supervisors as defined by Arkansas Code 20-27-1003 and Arkansas Pollution Control and Ecology Commission Regulation No. 21 to approve asbestos Notices of Intent, perform and coordinate asbestos inspections, conduct enforcement actions, and provide regulatory compliance information to assist the regulated community. Asbestos inspectors shall have personal protective equipment when needed to enter a regulated area; and

“(c) Other personnel as necessary to administer the asbestos program.”

Acts 2005, NO. 2022, § 40, provided: “ADEQ ASBESTOS PROGRAM. The fees collected pursuant to Arkansas Code 20-27-1004(5) shall be used by the department to fund operational expenses and to provide and train personnel to administer an asbestos program, as funding is available, including:

“(a) Personnel dedicated to issue certificates and licenses to qualified persons/companies, to perform audit of trainers, and to regularly update the ADEQ web page providing a listing of asbestos licensed parties;

“(b) Personnel who are trained as asbes-

tos supervisors as defined by Arkansas Code 20-27-1003 and Arkansas Pollution Control and Ecology Commission Regulation No.21 to approve asbestos Notices of Intent, perform and coordinate asbestos inspections, conduct enforcement actions, and provide regulatory compliance information to assist the regulated community. Asbestos inspectors shall have personal protective equipment when needed to enter a regulated area; and

“(c) Other personnel as necessary to administer the asbestos program.”

U.S. Code. Section 112 of the Clean Air Act, referred to in (2), is codified in 42 U.S.C. § 7412.

20-27-1005. Procedures.

The procedures of the Arkansas Department of Environmental Quality and the Arkansas Pollution Control and Ecology Commission for issuance of rules and regulations, conduct of hearings, notice, power of subpoena, review of action on licenses, right of appeal, presumptions, finality of actions, and related matters shall be as provided in Part I of the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., including, but not limited to, §§ 8-4-205, 8-4-210, 8-4-212 — 8-4-214, and 8-4-218 — 8-4-229.

History. Acts 1985, No. 394, § 4; A.S.A. 1947, § 82-1947.

20-27-1006. License required — Exceptions.

(a) Any asbestos abatement consultant or asbestos abatement contractor shall obtain a license under this section from the Arkansas Department of Environmental Quality prior to actively engaging in any asbestos demolition, renovation, or asbestos response action, and any training provider shall obtain a license under this section from the department prior to actively engaging in any asbestos training as provided by this subchapter.

(b)(1) The application for license shall be made in the manner and form required by the department. An application for license or renewal of a license shall be accompanied by proof of liability insurance coverage in the form and amount required by the department and proof of training and examination as required by the department.

(2) Training providers shall not be required to furnish proof of liability insurance coverage under subdivision (b)(1) of this section.

(c)(1) The department shall license all applicants for licenses under this subchapter who satisfy the requirements of this subchapter.

(2) Licenses shall be valid for a period of one (1) year.

(3) Licenses shall be renewable upon application and upon satisfying the renewal requirements of the department.

(d) State and federal governments and subdivisions thereof shall be exempt, except for training providers, from the license requirements of this section.

History. Acts 1985, No. 394, § 5; 531, § 4; 1993, No. 817, § 4; 1997, No. A.S.A. 1947, § 82-1948; Acts 1987, No. 308, § 1.

20-27-1007. Prohibitions.

It shall be unlawful for any person:

(1) To conduct:

(A) Asbestos response actions, demolitions, or renovations without having first obtained a license from the Arkansas Department of Environmental Quality when acting as an asbestos abatement consultant or as an asbestos abatement contractor;

(B) Training without having first obtained a license from the department when acting as an asbestos training provider; or

(C) Asbestos response actions, demolitions, or renovations without having first obtained certification from the department when acting as a clearance air monitor, contractor/supervisor, inspector, management planner, project designer, or worker;

(2) To participate in any response action, demolition, or renovation contrary to the regulations or orders issued under this subchapter or contrary to the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., and the Arkansas Solid Waste Management Act, § 8-6-201 et seq., and the regulations promulgated thereunder, whether or not such person is required to have a license or certificate pursuant to this subchapter;

(3) To knowingly make any false statement, representation, or certification in any application, record, report, or other document filed or required to be maintained under this subchapter or regulations adopted pursuant to this subchapter or to falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under this subchapter or any regulations adopted pursuant to this subchapter; or

(4) To violate any provision of this subchapter or any regulation or order adopted or issued under this subchapter.

History. Acts 1985, No. 394, § 6; 531, § 5; 1993, No. 817, § 5; 1997, No. A.S.A. 1947, § 82-1949; Acts 1987, No. 308, § 1; 1999, No. 54, § 1.

SUBCHAPTER 11 — BLASTING

SECTION.

20-27-1101. Penalty.

20-27-1102. Rules and regulations — Enforcement — Administration.

SECTION.

20-27-1103. Exemptions.

RESEARCH REFERENCES

Am. Jur. 31A Am. Jur. 2d, Explos.,
§§ 69-100, 163-171.

20-27-1101. Penalty.

Any person who knowingly violates any provision of this subchapter or any regulation or order adopted pursuant to this subchapter shall be guilty of a Class B misdemeanor.

History. Acts 1991, No. 780, § 1.

20-27-1102. Rules and regulations — Enforcement — Administration.

(a) The Director of the Department of Labor shall promulgate regulations to establish minimum standards for the qualifications of those individuals performing blasting in Arkansas.

(b) The director shall implement, enforce, and administer this subchapter and the regulations adopted pursuant to this subchapter.

(c) Regulations under this section shall be adopted pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(d)(1) The director may establish by regulation fees for certifying individuals as qualified to perform blasting in Arkansas.

(2) The fees shall not exceed the sum of thirty dollars (\$30.00) per applicant.

History. Acts 1991, No. 780, § 1; 1993,
No. 324, § 1.

20-27-1103. Exemptions.

This subchapter shall not apply to the following:

(1) Blasting conducted at a surface coal mine regulated by the Arkansas Department of Environmental Quality pursuant to the Arkansas Surface Coal Mining and Reclamation Act of 1979, § 15-58-101 et seq.; and

(2) Blasting conducted during seismic operations regulated by the Oil and Gas Commission pursuant to § 15-71-114.

History. Acts 1991, No. 780, § 1; 1999,
No. 1164, § 176.

SUBCHAPTER 12 — MOBILE HOME AND TRAVEL TRAILER PARKS**SECTION.**

20-27-1201. Sewage disposal plans —
Fees.

20-27-1201. Sewage disposal plans — Fees.

(a) As used in this section:

(1) "Division" means the Division of Health of the Department of Health and Human Services;

(2) "Mobile home" means a transportable, single-family dwelling unit suitable for year-round occupancy and containing the same water supply, waste disposal, and electrical conveniences as immobile housing;

(3) "Travel trailer" means a vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational, and vacation uses, permanently identified "travel trailer" by the manufacturer of the trailer and, when factory-equipped for the road, it shall have a body width not exceeding eight feet (8') and a length not exceeding thirty-two feet (32').

(b) When a mobile home park or travel trailer park is hereafter constructed utilizing a noncentralized method of sewage disposal, properly prepared plans and specifications for the construction shall be submitted to the Division of Sanitarian Services of the Division of Health of the Department of Health and Human Services for approval before any work is begun.

(c) The plan review fee shall be as follows:

(1) Two (2) — twenty-five (25) spaces	\$25.00
(2) Twenty-six (26) — fifty (50) spaces	50.00
(3) Fifty-one (51) — seventy-five (75) spaces	75.00
(4) Seventy-six (76) or more spaces	100.00

(d) All fees collected under this section are special revenues and shall be deposited into the State Treasury to the credit of the Public Health Fund to be used exclusively for the operation of the division.

(e) Subject to such rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the department may transfer all unexpended funds received from the collection of plan review fees, as certified by the Chief Fiscal Officer of the State, which shall be carried forward and made available for expenditure for the same purpose for any following fiscal year.

History. Acts 1991, No. 36, §§ 1-3.

SUBCHAPTER 13 — ARKANSAS QUARRY AND OPEN PIT MINE BLASTING CONTROL ACT

SECTION.

- 20-27-1301. Title.
- 20-27-1302. Definitions.
- 20-27-1303. Blasting standards.
- 20-27-1304. Notice of blasting operations.
- 20-27-1305. Record keeping.
- 20-27-1306. Insurance.

SECTION.

- 20-27-1307. Exemptions — Owners and operators.
- 20-27-1308. Director — Powers and duties generally.
- 20-27-1309. Hearings, orders, and notices.

SECTION.

- 20-27-1310. Cooperation with the State Fire Marshal.
- 20-27-1311. Existing rules and regulations — Orders — Remedies.
- 20-27-1312. Criminal penalties.

SECTION.

- 20-27-1313. Civil penalties.
- 20-27-1314. Restraint.
- 20-27-1315. Private right of action.
- 20-27-1316. Joint and several liability.
- 20-27-1317. Injunctive relief.

Effective Dates. Acts 1995, No. 814, § 18: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the lack of state standards and regulations regarding blasting operations at quarries threatens the safety and property of Arkansas citi-

zens. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995."

20-27-1301. Title.

This subchapter may be called the "Arkansas Quarry and Open Pit Mine Blasting Control Act".

History. Acts 1995, No. 814, § 1.

20-27-1302. Definitions.

As used in this subchapter:

- (1) "Blasting" means the use of explosives or a blasting agent;
- (2) "Blasting agent" means any material or mixture, consisting of fuel and oxidizer, that is intended for blasting if the finished product, as mixed for use or shipment, cannot be detonated by means of a No. 8 test blasting cap when unconfined;
- (3) "Contractor" means any person conducting blasting at a quarry or open pit mine other than the owner or operator and its employees;
- (4) "Department" means the Department of Labor;
- (5) "Director" means the Director of the Department of Labor;
- (6) "Explosives" means any substance classified as an explosive by either state or federal law;
- (7) "Mine" means any quarry or open pit;
- (8) "Operator" means any person conducting surface mining operations at a quarry or open pit;
- (9) "Owner" means the actual owner of the mine;
- (10) "Person" means any individual, partnership, corporation, business, or other entity; and
- (11) "Quarry" or "open pit mine" means any open excavation, prospect opening, pit, bank, or open-cut workings for the surface extraction of minerals, stone, or other product for commercial use, excluding coal.

History. Acts 1995, No. 814, § 2.

20-27-1303. Blasting standards.

(a) Blasting shall be conducted to prevent injury to persons, damage to public or private property, adverse impact on any underground mine, and change in the course, channel, or availability of surface or ground water outside the mine's perimeter.

(b)(1) In blasting operations, airblast shall not exceed the maximum limits set forth in 30 C.F.R. 816.67(b), at the location of any structure, residence, public building, school, church, or commercial or institutional building outside the perimeter of a mine and owned or leased by a person other than the mine owner or operator.

(2)(A) If necessary to prevent damage, the Director of the Department of Labor may require lower maximum allowable airblast levels than those specified in subdivision (b)(1) of this section for use in the vicinity of a specific blasting operation.

(B) Such an action shall only be taken following consultation with whatever expert or experts the director deems appropriate.

(3)(A) The director may require airblast measurement of any or all blasts and may specify the locations at which such measurements are taken.

(B) The measuring system shall have an upper-end flat frequency response of at least two hundred hertz (200 Hz). The measuring system shall also have a low-end frequency response of two hertz (2 Hz) and be within minus three decibels (-3 dB) at two hertz (2 Hz).

(c)(1) Flyrock from blasting operations, traveling in the air or along the ground, should not be cast from the mine site.

(2) In the event that flyrock is cast from the mine site, the owner or operator and contractor shall be liable and responsible for any damages, including cleanup and removal of the flyrock.

(d)(1)(A) In blasting operations, ground vibration shall not exceed the maximum limits established in accordance with either the maximum peak particle velocity limits contained in 30 C.F.R. 816.67(d)(2), or the scaled-distance equation established at 30 C.F.R. 816.67(d)(3), at the location of any structure, residence, public building, school, church, or commercial or institutional building outside the perimeter of a mine and owned or leased by a person other than the mine owner or operator.

(B) If a seismographic record for a blast exists or is required, the maximum limit for ground vibration shall be the peak particle velocity limits contained in 30 C.F.R. 816.67(d)(2), at any structure, residence, public building, school, church, or commercial or institutional building.

(2)(A) If necessary to prevent damage, the director may require lower maximum allowable ground vibration levels than those specified in subdivision (d)(1) of this section for use in the vicinity of a specific blasting operation.

(B) Such action shall only be taken following consultation with whatever expert or experts the director deems appropriate.

(3) The director may require an owner or operator to conduct seismic monitoring of any blasts or may specify the location at which the measurements are taken and the degree of detail necessary in the measurement.

(e)(1) The maximum limits for airblast and ground vibration as specified in subdivisions (b)(1) and (d)(1) of this section shall be construed as the threshold below which blasting damage is unlikely to occur. However, the director shall have the authority to promulgate regulations requiring more or less restrictive limits, as appropriate.

(2) Such an action shall only be taken following consultation with whatever expert or experts the director deems appropriate.

(f)(1) If a pit or quarry is closer than three hundred feet (300') from any public highway, road, or street, no blasting shall be conducted without the prior written approval of the director.

(2) Notwithstanding subdivision (f)(1) of this section, any quarry or pit in existence on July 1, 1995, shall be allowed to continue operations without obtaining the written approval of the director.

(g)(1) All blasting operations shall be conducted between sunrise and sunset, unless extraordinary circumstances arise which would necessitate conducting a blast outside these hours.

(2) Such circumstances shall be documented in the blast records required by § 20-27-1304.

(h)(1) Prior to the firing of a blast, the owner or operator or contractor shall follow a definite plan of warning signals that can be clearly seen or heard by anyone in the blasting area.

(2) The owner or operator shall inform all employees at the operation as to the established procedure.

History. Acts 1995, No. 814, § 6.

20-27-1304. Notice of blasting operations.

(a)(1) Any owner or operator and contractor conducting blasting operations in this state on July 1, 1995, shall notify the Director of the Department of Labor of each site or location on which blasting operations are conducted.

(2) Such notice shall be filed with the Department of Labor no later than October 1, 1995.

(b) Any owner or operator and contractor which, after July 1, 1995, begins blasting at a new site or location, or at a site on which no blasting has occurred for a period of six (6) consecutive months, shall notify the director of its operation at least twenty-four (24) hours in advance of the initial blast.

(c) The notice required by subsections (a) and (b) of this section shall be on a form approved by the director and shall include, but not be limited to, the following information:

(1) The name, address, and telephone number of the mine owner or operator;

(2) The name, address, and telephone number of the operator or contractor performing the blast;

(3) The location of the quarry site or open pit mine; and

(4) The location where the records of the blasting operations are to be maintained.

(d) All owners and operators and contractors shall notify the director in writing of any change of address or location.

History. Acts 1995, No. 814, § 7.

20-27-1305. Record keeping.

(a)(1) The owner or operator shall retain a record of all blasts for at least three (3) years.

(2) Upon request, copies of these records shall be made available to the Department of Labor for inspection.

(3) The records shall contain the following data:

(A) The name of the operator or contractor conducting the blast;

(B) The location, date, and time of the blast;

(C) The name and signature and the state certification number of the blaster conducting the blast;

(D) The identification and direction and distance, in feet, from the nearest blast hole to the nearest structure, residence, public building, school, church, or commercial or institutional building outside the perimeter of the mine which is owned or leased by a person other than the mine owner or operator;

(E) The weather conditions, including those which may cause possible adverse blasting effects;

(F) The type of material blasted;

(G) The sketches of the blast pattern, including number of holes, burden, spacing, decks, and delay pattern;

(H) The diameter and depth of the holes;

(I) The types of explosives used;

(J) The total weight of explosives used per hole;

(K) The maximum weight of explosives detonated in an eight-millisecond period;

(L) The initiation system;

(M) The type and length of stemming;

(N) The mats or other protection used;

(O) The seismographic and airblast records, if required, which shall include:

(i) The type of instrument, the sensitivity, and the calibration signal or certification of annual calibration;

(ii) The exact location of the instrument and the date, time, and distance from the blast;

(iii) The name of the person and firm who set up the instrument;

(iv) The name of the person and firm taking the reading;

(v) The name of the person and firm analyzing the seismographic record; and

- (vi) The vibration level or airblast level, or both, recorded;
- (P) The reasons and conditions for each unscheduled blast; and
- (Q) The reasons and conditions for any blast conducted before sunrise or after sunset.

(b)(1) The records required by subsection (a) of this section shall be maintained at the mine where the blast was conducted or at the regular business location of the owner or operator.

(2) Copies of the records required by subsection (a) of this section shall be maintained by the contractor.

History. Acts 1995, No. 814, § 8.

20-27-1306. Insurance.

(a) All owners, operators, and contractors covered by this subchapter shall maintain a policy of insurance issued by an insurance company authorized to do business in Arkansas and insuring the owner, operator, or contractor against liability for personal injury or property damage arising out of the operation or use of the mine in the minimum amount of one million dollars (\$1,000,000) for each incident or occurrence.

(b) Proof of such coverage shall be made available to the Director of the Department of Labor or his or her authorized representative upon request.

History. Acts 1995, No. 814, § 9.

20-27-1307. Exemptions — Owners and operators.

(a) This subchapter shall not apply to any mine in existence or operation on July 1, 1995, unless the mine or quarry site has been the subject of a criminal or civil proceeding resulting from its blasting operations within the three-year period prior to January 1, 1995.

(b) Notwithstanding subsection (a) of this section, the authority of the Director of the Department of Labor shall not be restricted with respect to:

(1) Mines or quarries which were in existence and operation on July 1, 1995, but which change owners or operators after July 1, 1995; or

(2) New or existing mines or quarries which were not in operation on July 1, 1995.

History. Acts 1995, No. 814, § 5.

20-27-1308. Director — Powers and duties generally.

(a) In addition to other powers and authority provided by law, the Director of the Department of Labor or his or her authorized representative shall have the following authority:

(1) To promulgate rules and regulations for the administration and enforcement of this subchapter after public hearing and opportunity for public comment;

(2) To establish by rule or regulation standards for the performance of blasting operations at mines after public hearing and opportunity for public comment;

(3) To investigate as to any violation of this subchapter or any rule, regulation, or order issued under this subchapter;

(4) To administer oaths, take or cause to be taken the depositions of witnesses, and require by subpoena the attendance and testimony of witnesses and the production of all records and other evidence relative to any matter under investigation or hearing;

(5) To enter and inspect during normal business hours any mine, any place of business of a mine owner or operator, or any place of business of any contractor engaged in blasting operations at any mine for the purpose of ascertaining compliance with this subchapter and any rule, regulation, or order issued under this subchapter. This right of entry includes the right to examine, inspect, and copy any appropriate records and to question any employees;

(6) To issue cease and desist orders, as well as orders directing that affirmative measures be taken to comply with this subchapter and any rule or regulation issued under this subchapter;

(7) To require, at his or her discretion, a mine owner or operator or contractor to offer a pre-blast survey of all buildings or structures up to a radius of one-half ($\frac{1}{2}$) mile of the perimeter of the mine prior to the initiation of blasting or the continuation of blasting under such terms and conditions as may be established by order of the director;

(8) To require, at his or her discretion, a mine owner or operator or contractor to develop and submit a blasting plan for approval;

(9) To require, at his or her discretion, a mine owner or operator or contractor to monitor and measure air blasts or ground vibration, or both, under such terms and conditions as may be established by order of the director or to conduct such monitoring and measuring through his or her authorized representative;

(10) To issue a variance from any specific requirement of this subchapter or any rule or regulation issued under this subchapter provided that literal compliance would constitute an undue hardship and that reasonable safety of persons and property is secured;

(11) To certify to official acts;

(12) To assess civil penalties as provided in § 20-27-1313; and

(13) To enforce generally this subchapter and the rules, regulations, and orders issued under this subchapter.

(b) In determining whether to order a pre-blast survey or whether to order monitoring and measurement of air blasts and ground vibration, the director may consider the nature of any written complaints made against that owner or operator or contractor or any written complaints about that specific mine location, as well as the number and frequency of such complaints.

(c) In case of failure of any person to comply with any subpoena lawfully issued under this section or upon the refusal of any witness to produce evidence or to testify to any matter regarding which he or she

may be lawfully interrogated, it shall be the duty of any circuit court or judge thereof, upon application of the Department of Labor, to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued by the court or a refusal to testify therein.

History. Acts 1995, No. 814, § 4.

20-27-1309. Hearings, orders, and notices.

(a) All hearings conducted by the Director of the Department of Labor and all orders, notices, and assessments shall conform to the requirements of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b) Service of any notice, order, or assessment may be made by delivery to the person to be ordered or notified or by mailing it, postage prepaid, addressed to the person at his or her principal place of business as last of record with the Department of Labor.

(c)(1) Any administrative order issued by the director shall be final, unless within twenty (20) days after service of notice thereof, the person charged with the violation or any complainant entitled to such notice notifies the director in writing that the order is contested.

(2) A complainant entitled to notice is any person who has made a written complaint within the past three (3) years to the department regarding the blasting operations of the person charged with the violation.

(d) If an order is contested, a final administrative order shall be made after hearing.

(e) Any final administrative action is subject to appeal pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1995, No. 814, § 10.

20-27-1310. Cooperation with the State Fire Marshal.

(a) The Director of the Department of Labor shall consult the State Fire Marshal regarding the adoption of any rules or regulations.

(b) The Department of Labor and the State Fire Marshal shall cooperate and coordinate their activities in order to avoid duplication of services.

History. Acts 1995, No. 814, § 12.

20-27-1311. Existing rules and regulations — Orders — Remedies.

(a) All existing rules and regulations of any other state agency relating to subjects embraced within this subchapter shall remain in full force and effect unless expressly repealed, amended, or superseded by the state agency affected.

(b) All orders entered, permits granted, and pending legal proceedings instituted by any person, public or private, relating to subjects embraced within this subchapter shall remain unimpaired and in full force and effect until superseded by actions taken by the Director of the Department of Labor under this subchapter.

(c) No existing civil or criminal remedies, public or private, for any wrongful action relating to subjects embraced by this subchapter shall be excluded or impaired by this subchapter.

History. Acts 1995, No. 814, § 13.

20-27-1312. Criminal penalties.

(a) Except as provided in subsection (b) of this section, any person who violates any provision of this subchapter or who violates any rule, regulation, or order issued under this subchapter shall be guilty of a Class A misdemeanor.

(b)(1) It shall be unlawful for a person to:

(A) Violate any provision of this subchapter or any rule, regulation, or order issued under this subchapter and leave the state or remove his or her person from the jurisdiction of this state;

(B) Purposely, knowingly, or recklessly conduct blasting in a manner prohibited by this subchapter or any rule, regulation, or order issued under this subchapter and thereby create a substantial likelihood of adversely affecting the health, safety, welfare, or property of any person, including the state or any political subdivision of the state; or

(C) Purposely or knowingly make any false statement, representation, omission, or certification in any document required to be maintained under this subchapter or to falsify, tamper with, or render inaccurate any monitoring device, method, or record required to be maintained under this subchapter.

(2) A person who violates this subsection shall be guilty of a Class D felony.

History. Acts 1995, No. 814, § 3.

20-27-1313. Civil penalties.

(a)(1) Any person who violates any provision of this subchapter or who violates any rule, regulation, or order issued under this subchapter may be assessed an administrative civil penalty by the Director of the Department of Labor in an amount not to exceed ten thousand dollars (\$10,000) per violation.

(2) Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.

(b)(1) Assessment of a civil penalty by the director shall be made no later than three (3) years from the date of the occurrence of the violation.

(2)(A) In his or her discretion, the director may accept payment of assessed civil penalties in installments.

(B) The assessment by the director shall be final, unless, within twenty (20) days after service of notice thereof by certified mail, the person charged with the violation or any complainant entitled to such notice notifies the director in writing that the proposed assessment is contested.

(C) If an assessment is contested, a final administrative determination shall be made pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(c) When finally determined, the amount of any assessment may be recovered in a civil action brought by the director in a court of competent jurisdiction without paying costs or giving bond for costs.

(d)(1) Sums collected as reimbursement for expenses, costs, and damages to the Department of Labor shall be deposited into the operating fund of the department.

(2) Sums collected as civil penalties shall be deposited into the general fund of the State Treasury.

(e) Notice of any assessment by the director shall be served on any person who has made a written complaint within the past three (3) years to the department regarding the blasting operations of the person charged with the violation.

History. Acts 1995, No. 814, § 3.

20-27-1314. Restraint.

In addition to the civil penalty provided in § 20-27-1313, the Director of the Department of Labor may petition any court of competent jurisdiction without paying costs or giving bond for costs to:

(1)(A) Enjoin or restrain any violation of or compel compliance with this subchapter and any rules, regulations, or orders issued under this subchapter.

(B) In situations in which there is an imminent threat to public or worker safety or to property, the director may seek a temporary restraining order for the cessation of any blasting;

(2) Affirmatively order that such remedial measures be taken as may be necessary or appropriate to implement or effectuate the purposes and intent of this subchapter; and

(3) Recover all costs, expenses, and damages to the Department of Labor and any other agency or subdivision of the state in enforcing or effectuating this subchapter.

History. Acts 1995, No. 814, § 3.

20-27-1315. Private right of action.

Any person adversely affected by a violation of this subchapter or any rules, regulations, or orders issued pursuant to this subchapter shall have a private right of action for relief against the violator.

History. Acts 1995, No. 814, § 3.

20-27-1316. Joint and several liability.

The owner or operator of any quarry or open pit mine where a blast is conducted and any contractor conducting the blast shall be jointly and severally liable for violations of this subchapter and any rules or regulations issued under this subchapter.

History. Acts 1995, No. 814, § 11.

20-27-1317. Injunctive relief.

In addition to all other remedies provided by this subchapter, the Attorney General and the prosecuting attorney of a county may apply to the circuit court or the judge in vacation of the county where the quarry or open pit mine is located for an injunction to restrain, prevent, or abate a public nuisance related to the subjects embraced by this subchapter or any violation of this subchapter or the rules, regulations, or orders issued under this subchapter.

History. Acts 1995, No. 814, § 14.

SUBCHAPTER 14 — CPVC PIPE

SECTION.

20-27-1401. Use of CPVC pipe authorized
for certain residential
structures.

20-27-1401. Use of CPVC pipe authorized for certain residential structures.

Chlorinated polyvinyl chloride SDR11 pipe and fittings may hereafter be used in the above-concrete installation of potable hot and cold water distribution systems in residential structures containing no more than four (4) living units.

History. Acts 1999, No. 819, § 1.

SUBCHAPTER 15 — BODY PIERCING, BRANDING, AND TATTOOING

SECTION.

20-27-1501. Definitions.
20-27-1502. Unlawful to body pierce,
brand, or tattoo a person
under eighteen (18) years
of age.
20-27-1503. Division of Health of the De-
partment of Health and
Human Services to license,
regulate, and inspect for
health hazards.

SECTION.

20-27-1504. Local health officials.
20-27-1505. No criminal liability.
20-27-1506. Blood-borne pathogens
course.
20-27-1507. Supervision of apprentice
body artists.
20-27-1508. Examination — Fee.
20-27-1509. Temporary demonstration li-
cense.

20-27-1501. Definitions.

As used in this subchapter:

(1) “Apprentice” means a person who:

(A) Is in training under the supervision of an artist trainer or a physician; and

(B) May not independently perform body piercing, branding, or tattooing;

(2) “Artist” means any person other than a licensed physician who performs body piercing, branding, or tattooing on a human;

(3) “Artist trainer” means an artist who:

(A) Is licensed by the Division of Health of the Department of Health and Human Services;

(B) Has worked in a body art establishment licensed by the division for at least three (3) years and been in compliance with division rules governing artists; and

(C) Has completed the course required under § 20-27-1506;

(4) “Board” means the State Board of Health;

(5)(A) “Body piercing” means the creation of an opening in the body of a human being for the purpose of inserting jewelry or other decoration.

(B) “Body piercing” shall not include piercing an ear with a disposable, single-use stud or solid needle that is applied using a mechanical device to force the needle or stud through the ear;

(6) “Branding” means a permanent mark made on human tissue by burning with a hot iron or other instrument;

(7) “Division” means the Division of Health of the Department of Health and Human Services; and

(8) “Tattooing” means any method of placing designs, letters, scrolls, figures, symbols, or any other marks upon or under the skin by introducing pigments or by the production of scars to form indelible marks with the aid of needles or other instruments, including permanent cosmetics.

History. Acts 2001, No. 414, § 1; 2005, No. 897, § 1.

Amendments. The 2005 amendment substituted “including §§ 20-27-1506 — 20-27-1508” for “unless the context other-

wise requires” in the introductory language; inserted present (1) and (3); and redesignated the remaining subdivisions accordingly.

RESEARCH REFERENCES

UALR L.J. Survey of Legislation, 2001 Arkansas General Assembly, Public Health and Welfare, 24 UALR L.J. 557.

20-27-1502. Unlawful to body pierce, brand, or tattoo a person under eighteen (18) years of age.

(a) A person under eighteen (18) years of age shall not undergo body piercing, branding, or tattooing unless:

(1) Written consent is given by the person's parent or legal guardian; and

(2)(A) The parent or legal guardian is present during the procedure.

(B) When providing written consent, the parent or legal guardian shall produce photo-bearing identification and attest in writing that the individual is the person's parent or legal guardian.

(b) Regardless of age, the person receiving the body piercing, branding, or tattooing shall attest to the fact that he or she is not under the influence of drugs or alcohol.

(c) Printed instructions on the care of the skin and the body piercing, branding, or tattooing shall be given to each person after the procedure, and a copy of the instructions shall be posted in a conspicuous place in the body piercing, branding, or tattooing studio or business.

(d)(1) In addition to the attestations required in subsections (a) and (b) of this section, records shall be kept of the names of all persons receiving a body piercing, branding, or tattooing and of the parents or guardians giving consent pursuant to the rules and regulations promulgated by the State Board of Health to implement this subchapter.

(2) All required signatures shall be in ink, and required records shall be available at a reasonable time for examination by the Division of Health of the Department of Health and Human Services and by local health officials.

(e)(1) Except as provided in subsection (a) of this section, it is unlawful to body pierce, brand, or tattoo a person under eighteen (18) years of age, and any person violating this prohibition shall be guilty of a Class C misdemeanor.

(2) Any person who falsely claims to be the minor's parent or legal guardian for the purpose of obtaining a body piercing, branding, or tattooing for a person under eighteen (18) years of age shall be guilty of a Class A misdemeanor.

(3) It is not a defense to a criminal prosecution under this section that at the time of the offense, the person who received the body piercing, branding, or tattooing possessed a letter of consent from the person's parent or legal guardian if the letter was forged or if a person falsely assumed the identity of the minor's parent or legal guardian.

History. Acts 2001, No. 414, § 1.

20-27-1503. Division of Health of the Department of Health and Human Services to license, regulate, and inspect for health hazards.

(a)(1) Body piercing, branding, and tattooing studios and businesses which and artists who perform body piercing, branding, or tattooing shall be licensed by the Division of Health of the Department of Health and Human Services.

(2) The business premises, equipment, procedures, techniques, and conditions of those businesses shall be subject to periodic inspection by the division.

(b)(1) The division may adopt appropriate rules and regulations regarding the artists, premises, equipment, procedures, techniques, and conditions of studios and businesses which perform procedures subject to this subchapter to assure that the premises, equipment, procedures, techniques, and conditions are aseptic and do not constitute a health hazard.

(2) Any rule or regulation affecting tattoo artists or studios in effect on August 13, 2001, shall remain in effect until the State Board of Health adopts rules and regulations pursuant to this subchapter.

(c) Applicants for a license shall file applications upon forms prescribed by the division.

(d) A license shall be issued only for the premises and persons in the application and shall not be transferable.

(e)(1)(A) The division shall levy and collect an annual fee of one hundred fifty dollars (\$150) per facility for issuance of a license to a studio or business that performs body piercing, branding, or tattooing.

(B) The division shall levy and collect an annual fee of one hundred dollars (\$100) per artist for issuance of a license to an artist who performs body piercing, branding, or tattooing.

(2) The annual fee shall be based upon the calendar year, January 1 through December 31, with fees for any given year due by December 31 of the previous year.

(3) If the annual fee for a licensed business has not been paid by March 1 of the calendar year, the business shall be closed until a new license has been issued by the division and the annual fee has been paid.

(4)(A) If the annual fee for a licensed artist has not been paid by March 1 of the calendar year, the artist shall have his or her license revoked.

(B) If an artist has his or her license revoked, he or she shall be retested and complete a new apprenticeship under a licensed artist before a license may be reissued.

(5) In addition to the penalty provisions found in this subsection, any studio or business owner operating without a current license is subject to the penalties and fines allowed by § 20-7-101.

(f) All fees levied and collected under this subchapter are declared to be special revenues and shall be deposited into the State Treasury, there to be credited to the Public Health Fund to be used exclusively for the Tattoo and Piercing Program of the division.

(g) Subject to any rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the division may transfer all unexpended funds relative to the health facility services that pertain to fees collected, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

History. Acts 2001, No. 414, § 1; 2003, No. 266, § 1.

Amendments. The 2003 amendment, in (a)(1), deleted "Beginning January 1, 2002" from the beginning and substituted "businesses which and artists who per-

form" for "businesses which perform"; substituted "artists" for "artist" in (b)(1); re-wrote (e); and added "to be used exclusively for the Tattoo and Piercing Program of the division" in (f).

RESEARCH REFERENCES

UALR L.J. Survey of Legislation, 2003 Arkansas General Assembly, Public Health and Welfare, Body Piercing and Tattooing, 26 UALR L.J. 463.

20-27-1504. Local health officials.

(a) Any city or county department of health may periodically inspect body piercing, branding, or tattooing studios and businesses which perform body piercing, branding, or tattooing on the basis of compliance with state, city, or county sanitary regulations.

(b) The governing body of any municipality or county may adopt, by ordinance, local sanitary regulations of body piercing, branding, or tattooing studios and businesses which perform body piercing, branding, or tattooing.

History. Acts 2001, No. 414, § 1.

20-27-1505. No criminal liability.

Nothing in this subchapter creates any liability, criminal or otherwise, for a person under eighteen (18) years of age for having the body pierced, branded, or tattooed.

History. Acts 2001, No. 414, § 1.

20-27-1506. Blood-borne pathogens course.

(a)(1) Each artist trainer and apprentice shall complete a blood-borne pathogens course approved by the Division of Health of the Department of Health and Human Services.

(2) Each artist trainer shall complete the course before training any apprentice.

(3) Each apprentice shall complete the course before applying for the examination required under § 20-27-1508.

(b)(1)(A) The division shall promulgate rules to establish standards for the blood-borne pathogens course required under this section.

(B) The course shall require a minimum of two (2) hours of direct instruction.

(2) The course may be taught by providers approved by the division, including, but not limited to:

(A) The American Red Cross;

(B) Any nationally recognized body art organization;

(C) Any institution of higher learning; and

(D) Any other individual or group approved by the division.

History. Acts 2005, No. 897, § 2.

20-27-1507. Supervision of apprentice body artists.

(a) No artist trainer may train more than two (2) apprentices at any one (1) time.

(b)(1) During the apprenticeship, each apprentice shall complete at least fifteen (15) hours of supervised body art work each week in an establishment licensed under § 20-27-1503.

(2)(A) The artist trainer shall maintain a log of the hours worked by the apprentice.

(B) The log shall accompany the apprentice's application for the written examination under § 20-27-1508.

History. Acts 2005, No. 897, § 2.

20-27-1508. Examination — Fee.

(a)(1) Each apprentice seeking licensure as an artist under the rules of the Division of Health of the Department of Health and Human Services shall take a written examination and a practical examination prepared or approved by the division.

(2) Until an apprentice receives a passing grade on both the written examination and the practical examination, no apprentice may:

(A) Be licensed as an artist;

(B) Hold himself or herself out as a licensed artist; or

(C) Independently perform body piercing, branding, or tattooing.

(b) The division shall levy and collect a fee of fifty dollars (\$50.00) from each apprentice who applies to take the written and practical examinations required under this section for licensure as an artist.

History. Acts 2005, No. 897, § 2.

20-27-1509. Temporary demonstration license.

(a) The Division of Health of the Department of Health and Human Services may issue a temporary demonstration license to an artist, studio, or business that performs body piercing, branding, or tattooing or to a supplier of materials for body piercing, branding, or tattooing for:

(1) Educational purposes;

(2) Trade shows; and

(3) Demonstrations of body piercing, branding, or tattooing products or procedures.

(b) A temporary demonstration license shall be valid for no more than fourteen (14) consecutive days.

(c) The division shall levy and collect a fee of one hundred fifty dollars (\$150) for each temporary demonstration license.

History. Acts 2005, No. 897, § 2.

SUBCHAPTER 16 — CHILDREN’S PRODUCT SAFETY ACT OF ARKANSAS

SECTION.

- 20-27-1601. Title.
- 20-27-1602. Definitions.
- 20-27-1603. Unsafe children’s products — Prohibition.
- 20-27-1604. Remedies and enforcement.

SECTION.

- 20-27-1605. Unsafe children’s products — Child care facilities.
- 20-27-1606. Revocation of child care facility licenses.

20-27-1601. Title.

This subchapter shall be known as the “Children’s Product Safety Act of Arkansas”.

History. Acts 2001, No. 1313, § 1.

RESEARCH REFERENCES

UALR L.J. Survey of Legislation, 2001
Arkansas General Assembly, Public
Health and Welfare, 24 UALR L.J. 557.

20-27-1602. Definitions.

As used in this subchapter:

(1)(A) “Children’s product” means a product, including, but not limited to, a full-size crib, non-full-size crib, toddler bed, bed, car seat, chair, high chair, booster chair, hook-on chair, bath seat, gate, or other enclosure for confining a child in a play yard, stationary activity center, carrier, stroller, walker, swing, toy, or play equipment that meets the following criteria:

(i) The product is designed or intended for the care of or use by children under six (6) years of age or is designed or intended for the care of or use by both children under six (6) years of age and children six (6) years of age or older; and

(ii) The product is designed or intended to come into contact with the child while the product is used.

(B) “Children’s product” does not mean a product that:

(i) May be used by or for the care of a child under six (6) years of age but is designed or intended for use by the general population or segments of the general population and not solely or primarily for use by or for the care of a child; or

(ii) Is a medication, drug, or food that is intended to be ingested;

(2) “Commercial user” means any person who deals in children’s products or who otherwise by his or her occupation holds himself or herself out as having knowledge or skill peculiar to children’s products, or any person who is in the business of remanufacturing, retrofitting, selling, leasing, subletting, or otherwise placing in the stream of commerce children’s products;

(3) “Crib” means a bed or containment designed to accommodate an infant;

(4) “Full-size crib” means a full-size crib as defined in 16 C.F.R. § 1508.3, as it exists on January 1, 2001, regarding the requirements for full-size cribs;

(5) “Infant” means any person less than thirty-five inches (35”) tall and less than three (3) years of age;

(6) “Non-full-size crib” means a non-full-size crib as defined in 16 C.F.R. § 1509.3, as it exists on January 1, 2001, regarding the requirements for non-full-size cribs; and

(7) “Person” means a natural person, firm, corporation, limited liability company, or association or an employee or agent of a natural person or an entity.

History. Acts 2001, No. 1313, § 2.

20-27-1603. Unsafe children’s products — Prohibition.

(a) No commercial user shall remanufacture, retrofit, sell, contract to sell or resell, lease, sublet, or otherwise place in the stream of commerce a children’s product that is unsafe.

(b) A children’s product is unsafe for purposes of this subchapter if it meets any of the following criteria:

(1) It does not conform to federal law and regulatory standards for the children’s product;

(2) It has been recalled for any reason by an agency of the federal government or by the product’s manufacturer, distributor, or importer, and the recall has not been rescinded; or

(3) An agency of the federal government has issued a warning that a specific product’s intended use constitutes a safety hazard, and the warning has not been rescinded.

(c)(1) The Attorney General shall create, maintain, and update quarterly a comprehensive list of children’s products that have been identified as recalled children’s products as determined by the United States Consumer Product Safety Commission.

(2) The Attorney General shall make the comprehensive list available to the public at no cost by posting it on the internet and encouraging links from the internet site.

(d) A crib is unsafe if it does not conform to the standards existing on January 1, 2001, endorsed or established by the Consumer Product Safety Commission, including, but not limited to, Title 16 of the Code of Federal Regulations and the American Society for Testing and Materials, as follows:

(1) 16 C.F.R. § 1508 and any regulations adopted to amend or supplement the regulations;

(2) 16 C.F.R. § 1509 and any regulations adopted to amend or supplement the regulations;

(3) 16 C.F.R. § 1303 and any regulations adopted to amend or supplement the regulations; and

(4) The following standards and specifications as exist on January 1, 2001, of the American Society for Testing Materials for corner posts of baby cribs and structural integrity of baby cribs:

(A) American Society for Testing Materials F 966-90, concerning corner post standard;

(B) American Society for Testing Materials F 1169-88, concerning structural integrity of full-size baby cribs; and

(C) American Society for Testing Materials F 1822-97, concerning non-full-size cribs.

(e) Cribs that are unsafe shall include, but not be limited to, cribs that have any of the following dangerous features or characteristics:

(1) Corner posts that extend more than one-sixteenth inch ($\frac{1}{16}$ ");

(2) Spaces between side slats more than two and three hundred seventy-five hundredths inch (2.375");

(3)(A) Mattress support that can be easily dislodged from any point of the crib.

(B) A mattress segment can be easily dislodged if it cannot withstand at least a twenty-five-pound upward force from underneath the crib;

(4) Cutout designs on the end panels;

(5) Rail height dimensions that do not conform to both of the following:

(A) The height of the rail and end panel as measured from the top of the rail or panel in its lowest position to the top of the mattress support in its highest position is at least nine inches (9"); and

(B) The height of the rail and end panel as measured from the top of the rail or panel in its highest position to the top of the mattress support in its highest position to the top of the mattress support in its lowest position is at least twenty-six inches (26");

(6) Any screws, bolts, or hardware that are loose and not secured;

(7) Sharp edges, points, or rough surfaces or any wood surfaces that are not smooth and free from splinters, splits, or cracks;

(8) Tears in mesh or fabric sides in a non-full-size crib;

(9) A non-full-size crib that folds in a "V" shape design that does not have top rails that automatically lock into place when the crib is fully set up; or

(10) The mattress pad in a non-full-size mesh or fabric crib exceeds one inch (1").

(f)(1) An unsafe children's product may be retrofitted if the retrofit has been approved by the agency of the federal government issuing the recall or warning or the agency responsible for approving the warning.

(2) A retrofitted children's product may be sold if it is accompanied at the time of sale by a notice declaring that it is safe to use for a child under six (6) years of age.

(3) The notice shall include:

(A) A description of the original problem which made the recalled product unsafe;

(B) A description of the retrofit which explains how the original problem was eliminated and declaring that it is now safe to use for a child under six (6) years of age; and

(C)(i) The name and address of the commercial user who accomplished the retrofit certifying that the work was done, along with the name and model number of the product retrofitted.

(ii) The commercial user is responsible for ensuring that the notice is present with the retrofitted product at the time of sale.

(g) A retrofit is exempt from this subchapter if:

(1) The retrofit is for a children's product that requires assembly by the consumer;

(2) The approved retrofit is provided with the product by the commercial user;

(3) The retrofit is accompanied at the time of sale by instructions explaining how to apply the retrofit; or

(4) The seller of a previously unsold product accomplishes prior to sale the repair approved or recommended by an agency of the federal government.

History. Acts 2001, No. 1313, § 3; 2003, No. 1159, § 1.

Amendments. The 2003 amendment, in (c)(1), inserted "quarterly" and substituted "recalled children's products as determined by the United States Consumer Product Safety Commission" for "meeting any of the criteria set forth in subsection (b) of this section"; and substituted "by

posting it on the Internet and encouraging" for "and shall post it on the Internet and encourage" in (c)(2).

Publisher's Notes. As enacted by Acts 2001, No. 1313, subsection (a) began: "On or after January 1, 2002,".

As enacted by Acts 2001, No. 1313, subsection (c) began: "No later than January 1, 2002,".

20-27-1604. Remedies and enforcement.

(a) Any act or practice which is a violation of this subchapter shall constitute an unfair and deceptive act or practice as defined by the Deceptive Trade Practices Act, § 4-88-101 et seq.

(b) All remedies, penalties, and authority granted to the Attorney General under the Deceptive Trade Practices Act, § 4-88-101 et seq., shall be available to the Attorney General for the enforcement of this subchapter.

(c) Nothing in this section limits the rights or remedies which are otherwise available to any person under any law.

History. Acts 2001, No. 1313, § 4.

20-27-1605. Unsafe children's products — Child care facilities.

(a)(1) A child care facility may not use or have on the premises an unsafe children's product as described in this subchapter.

(2) This subsection does not apply to an antique or collectible children's product if it is not used by or accessible to any child in the child care facility.

(b)(1) Within sixty (60) calendar days after August 13, 2001, the Attorney General shall send a letter to all licensed child care facilities informing them of the provisions of this subchapter.

(2)(A) The Attorney General shall notify licensed child care facilities of the provisions of this subchapter and of recalled children's products as identified by the United States Consumer Product Safety Commission by maintaining a list of those products on its website.

(B) The list shall be updated quarterly.

(c) The Department of Health and Human Services may promulgate rules to carry out this section.

(d)(1) Each child care facility shall maintain a file containing the list of recalled children's products maintained on the Attorney General's or the commission's website and any updates to the list and shall make the file accessible to the facility staff members and to parents of the children who attend the facility.

(2) A child care facility may request the Attorney General's office to assist it in obtaining the list by providing its name and mailing address to the commission for the purpose of receiving the list of recalled children's products and quarterly updates through a mailing sent directly from the commission or by providing the commission with the facility's electronic mail address so it may receive the list and updates by electronic mail notification.

(e)(1) As part of the licensing, licensing renewal, or periodic update process conducted by the department, each child care facility shall certify in writing on forms provided by the department, that it has reviewed the list of recalled children's products maintained by the office of the Attorney General or the commission and any updates to the list, and that after a thorough inspection, to the best of its knowledge, there are no unsafe children's toys, furniture, or equipment in the facility.

(2) The office of the Attorney General shall prepare a certification form, and the department shall require each facility to complete the certification form in the process of licensing, licensing renewal, or periodic update.

(3) The department shall retain the certification form completed by each facility in each respective facility's licensing file.

History. Acts 2001, No. 1313, § 5; 2003, No. 1159, § 2.

A.C.R.C. Notes. As enacted, subdivision (a)(1) began: "Beginning January 1, 2002."

Amendments. The 2003 amendment deleted "and of their responsibilities under the provisions of this subchapter" from the end of (b)(1); and rewrote (b)(2), (d), and (e)(1).

20-27-1606. Revocation of child care facility licenses.

The Department of Health and Human Services may revoke or refuse to renew the license of any child care facility or refuse to issue a full license to the permit holder if the licensee or permit holder fails to comply with § 20-27-1605(d) and (e).

History. Acts 2001, No. 1313, § 6.

SUBCHAPTER 17 — ARKANSAS CHILD DEATH REVIEW PANEL

SECTION.

20-27-1701. Legislative findings and purpose.

20-27-1702. Definitions.

20-27-1703. Arkansas Child Death Review Panel — Creation.

SECTION.

20-27-1704. Duties.

20-27-1705. Investigation.

20-27-1706. Records — Confidentiality.

20-27-1707. Reporting.

20-27-1701. Legislative findings and purpose.

(a) The General Assembly finds that:

(1) The unexpected death of infants and children is an important public health concern;

(2) The collection of data on the causes of unexpected deaths will enable the State of Arkansas to protect some infants and children from preventable deaths and help reduce the incidence of these deaths; and

(3) Multidisciplinary and multiagency review of infant and child deaths can assist this state in investigating infant and child deaths, developing a greater understanding of the incidence and causes of these deaths and the methods for prevention, and identifying the gaps in services to children and families.

(b) The purpose of this subchapter is to:

(1) Identify the causes of death of children under eighteen (18) years of age; and

(2) Reduce the incidence of injury and death to children by requiring a death review to be performed in all cases of unexpected deaths of children under eighteen (18) years of age.

History. Acts 2005, No. 1818, § 1.**20-27-1702. Definitions.**

As used in this subchapter:

(1) “Child” means a person under eighteen (18) years of age; and

(2) “Unexpected death” means:

(A) A death involving a child who has not been in the care of a licensed physician for treatment of an illness that is the cause of death;

(B) A clinical diagnosis of death due to Sudden Infant Death Syndrome; or

(C) A death due to an unknown cause.

History. Acts 2005, No. 1818, § 1.**20-27-1703. Arkansas Child Death Review Panel — Creation.**

(a) The Arkansas Child Death Review Panel is created within the Arkansas Child Abuse/Rape/Domestic Violence Commission.

(b) The review panel shall consist of the following members:

(1) A representative from the State Medical Examiner’s Office;

(2) A coroner who is registered with the American Board of Medico-legal Death Investigators, Inc;

(3) A representative from the Center for Health Statistics of the Division of Health of the Department of Health and Human Services;

(4) A representative from the Crimes Against Children Division of the Department of Arkansas State Police;

(5) A representative from the Division of Children and Family Services of the Department of Health and Human Services;

(6) A representative from the Arkansas Child Abuse/Rape/Domestic Violence Commission;

(7) A physician who specializes in child abuse;

(8) A representative from the College of Public Health of the University of Arkansas for Medical Sciences;

(9) A representative from the office of the Prosecutor Coordinator; and

(10) Any other individuals the review panel determines are necessary for a review.

History. Acts 2005, No. 1818, § 1.

20-27-1704. Duties.

The Arkansas Child Death Review Panel may:

(1) Establish local and regional review panels and delegate some or all of its responsibilities under this subchapter;

(2) Analyze data available from state agencies or other agencies that may decrease unexpected deaths of children;

(3) Collect, review, and analyze all death investigation reports prepared under this subchapter and other appropriate information to prepare reports for the General Assembly concerning the causes of unexpected deaths of children and methods to decrease those deaths;

(4) Identify trends relevant to unexpected deaths of children;

(5) Educate the citizens of Arkansas regarding the incidence and causes of injury to and death of children and of the public's role to assist in reducing this risk;

(6) Establish training criteria for county coroners; and

(7) Determine the information to be included in a child death investigation report and provide this information to county coroners, medical providers, and other agencies to be used in preparing a death investigation report.

History. Acts 2005, No. 1818, § 1.

20-27-1705. Investigation.

(a)(1) A copy of a child death investigation report required under this subchapter, including information from law enforcement agencies, coroners, fire departments, or medical providers, or any other information relative to the death investigation shall be provided to the

Arkansas Child Death Review Panel within thirty (30) days from the date the review panel requests the information.

(2) Subdivision (a)(1) of this section is not applicable to a death that is under criminal investigation or prosecution or has been adjudicated in a court of law.

(b)(1) The review panel or a local or regional review panel may access medical records and vital records in the custody of physicians, hospitals, clinics, other health care providers, and the Division of Health of the Department of Health and Human Services concerning the unexpected death of the child being investigated.

(2) The review panel may request any other information, documents, or records pertaining to the completed investigation of unexpected deaths of children.

(c) Nothing in this subchapter shall alter or restrict the authority or jurisdiction of a county coroner.

(d) When the review panel determines that a parent or guardian was treating a child according to the tenets and practices of a recognized religious method of treatment that has a reasonable proven record of success, the review panel is not required to make a finding of negligent treatment or maltreatment.

History. Acts 2005, No. 1818, § 1.

20-27-1706. Records — Confidentiality.

(a)(1) All records, reports, and other information obtained by the Arkansas Child Death Review Panel or local or regional review panel and the result of any child death investigation report shall be confidential.

(2) The records, reports, and other information obtained by the review panel or local or regional review panel shall not be:

(A) Subject to a subpoena;

(B) Disclosed or compelled to be produced in any civil, administrative, or other proceeding; or

(C) Admissible as evidence in any civil, administrative, or other proceeding.

(3) The records, reports, and other information obtained by the review panel or local or regional review panel shall be available to law enforcement agencies and prosecuting attorneys.

(b) Any person, agency, or entity furnishing confidential information shall not be liable for releasing the confidential information if the information was furnished in good faith under this subchapter.

(c) The review panel may publish statistical compilations reflecting unexpected deaths of children that do not identify individual cases, physicians, hospitals, clinics, or other health care providers.

(d)(1) State, local, or regional review panel members shall be immune from civil and criminal liability in connection with their good-faith participation on the review panel and all activities related to the review panel.

(2) No civil or criminal immunity exists if a state, local, or regional review panel member knowingly or willingly violates this subchapter.

(e) Pursuant to the Health Insurance Portability and Accountability Act of 1996, disclosure of protected health information is allowed for public health, safety, and law enforcement purposes, and providing case information on unexpected deaths of children for review by the review panel is not a violation of the Health Insurance Portability and Accountability Act of 1996.

History. Acts 2005, No. 1818, § 1.

U.S. Code. The Health Insurance Portability and Accountability Act of 1996, referred to in (e), is Act Aug. 21, 1996,

Pub. L. No. 104-191, 110 Stat. 1936, codified throughout Titles 18, 26, 29 and 42 of the U.S. Code.

20-27-1707. Reporting.

(a)(1) The Arkansas Child Death Review Panel shall report on or before December 31 of each year to the Legislative Council the number and causes of unexpected deaths of children.

(2) The Legislative Council shall forward the report to the Senate Interim Committee on Children and Youth and the House Interim Committee on Aging, Children and Youth, Legislative and Military Affairs.

(b) The report shall include:

(1) The review panel’s finding and recommendations for each of its duties under § 20-27-1704;

(2) An analysis of factual information obtained from the review of the child death investigation reports under § 20-27-1705; and

(3) Reports of the review panel and any local or regional review panels that do not violate the confidentiality provisions under § 20-27-1706.

History. Acts 2005, No. 1818, § 1.

CHAPTER 28

PUBLIC WATER SYSTEM SERVICE ACT

SECTION.
20-28-101. Title.
20-28-102. Definitions.
20-28-103. Penalties — Enforcement.

SECTION.
20-28-104. Annual fees — Exceptions.
20-28-105. Payment of fees.
20-28-106. Disposition of funds.

Cross References. Fees for review of plans, § 20-7-123.

Effective Dates. Acts 1987, No. 95, § 8: Feb. 27, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that due to current revenue shortfalls the services provided to the citizens of this State by the

Arkansas Department of Health are threatened; that these services protect the public health, welfare and safety; that the establishment of a fee system will keep these services operational. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health

and safety shall be in full force and effect from and after its passage and approval.”

Acts 1991, No. 1053, § 5: July 1, 1991. Emergency clause provided: “It is hereby found and determined by the Seventy-Eighth General Assembly that this act provides for the collection of certain fees based on the state’s fiscal year; that for the proper administration of this act, it should become effective on the first day of the next fiscal year; that the beginning of the next fiscal year is July 1, 1991; and that if this emergency clause is not adopted the effective date of this act may be after July 1, 1991. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991.”

Acts 1993, No. 903, § 5: emergency clause failed. Emergency clause provided: “It is hereby found and determined by the Seventy-Ninth General Assembly that this act provides for the collection of certain fees based on the state’s fiscal year; that for the proper administration of this act, it should become effective on the first day of the next fiscal year; that the beginning of the next fiscal year is July 1, 1993; and that if this emergency clause is not adopted the effective date of this act may be after July 1, 1993. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1993.”

20-28-101. Title.

This chapter shall be known as the “Public Water System Service Act”.

History. Acts 1987, No. 95, § 1; 1991, No. 1053, § 1.

20-28-102. Definitions.

As used in this chapter:

(1) “Community public water system” means a public water system which serves at least fifteen (15) service connections used by year-round residents or which regularly serves at least twenty-five (25) year-round residents;

(2) “Noncommunity public water system” means a public water system, not a community public water system, which serves fifteen (15) connections or twenty-five (25) persons at least sixty (60) days during the year;

(3) “Nontransient noncommunity water system” means a noncommunity water system which serves at least twenty-five (25) of the same individuals at least one hundred eighty (180) days, or portions thereof, per year, or a public water system which is utilized as a source for bottled water;

(4) “Public water system” means all sources and their surroundings from which water is derived for drinking or domestic purposes by the public, including sources for bottled water, and all structures, conduits, and appurtenances in connection therewith by which water for such use is obtained, treated, conditioned, stored, and delivered to customers;

(5) “Public Water System Supervision Program” means the program administered by the Division of Engineering of the Division of Health of

the Department of Health and Human Services, which includes the monitoring and supervision of all community public water systems. Activities under this program include, but are not limited to, conducting sanitary surveys, collecting and analyzing water samples and interpreting the results, training water system operators, investigating water and wastewater complaints, and reviewing applications, engineering reports, and construction plans for water and wastewater facilities; and

(6) "Service connection" means any connection to a community or nontransient noncommunity public water system which delivers treated water to a residence, business, office, industry, or other customer for domestic, commercial, or industrial use.

History. Acts 1987, No. 95, § 2; 1991, No. 1053, § 1.

20-28-103. Penalties — Enforcement.

(a)(1) The owner or agent of any water system violating any provisions of this chapter shall upon conviction be guilty of a violation.

(2) Each day in violation shall constitute a separate offense subject to a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500).

(b) Additionally, any water system violating any provision of this chapter shall be subject to civil penalties up to one thousand dollars (\$1,000) per day for each day during which the violation occurs.

(c) The Attorney General or his or her designee shall assist the Division of Health of the Department of Health and Human Services in prosecuting water systems not in compliance with this chapter.

History. Acts 1987, No. 95, § 5; 1991, No. 1053, § 1; 2005, No. 1994, § 127. substituted "violation" for "misdemeanor" in (a); and inserted "or her" in (c).

Amendments. The 2005 amendment

20-28-104. Annual fees — Exceptions.

(a) The Division of Health of the Department of Health and Human Services may collect the following annual fees from each public water system for service provided, other than plan reviews, by the public water system supervision program:

(1) Community water systems and nontransient noncommunity water systems: Not more than twenty-five cents (25¢) per service connection per month;

(2) Noncommunity: One hundred dollars (\$100);

(3) The minimum fee charged to a community water system or a nontransient noncommunity water system is two hundred dollars (\$200) per year;

(4) The number of service connections for nontransient noncommunity water systems shall be calculated by dividing the population served by two and one-half (2.5);

(5) The number of service connections for community public water systems not serving discrete service connections shall be calculated by dividing the population served by two and one-half (2.5).

(b) The number of service connections or population served shall be taken from the department's public water system inventory at the time of billing.

(c)(1) New water systems will not be assessed a fee for services until water is supplied to the first connection.

(2) All state-owned noncommunity water systems are exempt from the fee provisions of this chapter.

(d) The fee shall be established by the State Board of Health to assure implementation of this chapter.

History. Acts 1987, No. 95, § 3; 1991, No. 1053, § 1; 1993, No. 903, § 1.

20-28-105. Payment of fees.

(a) All fees payable under this chapter shall be due according to the following schedule and shall be payable to the Division of Health of the Department of Health and Human Services:

(1) Annual fees of one thousand dollars (\$1,000) and less shall be payable in a single payment due on January 1 of each year;

(2) Annual fees greater than one thousand dollars (\$1,000) and less than five thousand dollars (\$5,000) shall be payable in quarterly payments, with the payments due on October 1, January 1, April 1, and July 1 of each year;

(3) Annual fees of five thousand dollars (\$5,000) and greater shall be payable in monthly payments, with the first payment due on August 1 of each year. Successive payments shall be due on the first day of each month.

(b) All water systems issuing regular water bills for water service may recover the cost of the fees stated in § 20-28-104 by one (1) of the following methods:

(1) Assessing a direct charge on each bill of not more than twenty-five cents (25¢) per month per service connection; or

(2) Apportioning the total amount of the annual fee charged to the water system among its customers in any manner that the water system determines to be more equitable. However, no charge in excess of twenty-five cents (25¢) per month per service shall be charged for any service through which water is provided to another community public water system.

(c) The charge shall be labeled, "FEE FOR FEDERAL SAFE DRINKING WATER ACT COMPLIANCE", and shall not be considered as a part of the water rates of the respective water systems. The fee shall be established by the State Board of Health to assure implementation of this chapter.

History. Acts 1987, No. 95, § 4; 1991, No. 1053, § 1; 1993, No. 903, § 1. Act, referred to in this section, is codified as 21 U.S.C. § 349, 42 U.S.C. § 201, and U.S. Code. The Safe Drinking Water 42 U.S.C. § 300f et seq.

20-28-106. Disposition of funds.

(a) All fees, fines, and penalties collected under this chapter are declared special revenues and shall be deposited into the State Treasury to the credit of the Public Health Fund, and such moneys shall be expended only as specified in subsection (c) of this section for the operation of the Public Water System Supervision Program.

(b) Subject to rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the Division of Health of the Department of Health and Human Services may transfer all unexpended funds relative to the program that pertain to fees collected, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

(c) Expenditures of funds collected under this section shall be limited to the following purposes:

(1) In the Division of Engineering of the Division of Health of the Department of Health and Human Services;

(A) Personnel expenditures for staff engaged in program activities;

(B) Expenditures for capital equipment, including vehicles, for program activities;

(C) Maintenance and operation expenditures for staff engaged in program activities;

(D) Expenditures for official business travel for staff engaged in program activities;

(E) Expenditures for training and conferences for staff engaged in program activities;

(F) Expenditures for public education activities in support of the program and the drinking water industry;

(G) Expenditures for water system operator training activities;

(H) Expenditures in support of a statewide wellhead protection program;

(I) Expenditures for consultants and professional services in support of program activities; and

(J) Expenditures for any other activities directly related to the program; and

(2) In the Division of Public Health Laboratories of the Division of Health of the Department of Health and Human Services;

(A) Personnel expenditures for staff engaged in drinking water analyses;

(B) Expenditures for capital equipment for drinking water analytical services;

(C) Maintenance and operation expenditures for staff engaged in drinking water analytical services;

(D) Expenditures for official business travel for staff engaged in drinking water analytical services; and

(E) Expenditures for training and conferences for staff engaged in drinking water analytical services.

History. Acts 1987, No. 95, § 6; 1991, No. 1053, § 1.

CHAPTER 29

ARKANSAS MANUFACTURED HOME RECOVERY ACT

SECTION.

- 20-29-101. Title.
- 20-29-102. Definitions.
- 20-29-103. Disposition of funds.
- 20-29-104. Assessments.
- 20-29-105. Complaints — Amount of damages.
- 20-29-106. Payment of damages — Award from Manufactured Housing Recovery Fund when damages not paid.

SECTION.

- 20-29-107. Appeals.
- 20-29-108. Suspension of license pending reimbursement or appeal.
- 20-29-109. [Repealed.]
- 20-29-110. Enforcement.
- 20-29-111. Use of funds exceeding \$400,000.
- 20-29-112. Regulations.

A.C.R.C. Notes. References to “this chapter” in §§ 20-29-101 — 20-29-110 may not apply to §§ 20-29-111 and 20-29-112 which were enacted subsequently.

Cross References. Manufactured Home Standards Act, § 20-25-101 et seq.

Effective Dates. Acts 1988 (3rd Ex. Sess.), No. 9, § 4: Feb. 9, 1988. Emergency clause provided: “It is hereby found and determined by the General Assembly that it is essential to the operation of the Arkansas Manufactured Home Commis-

sion that the appropriations provided herein take effect immediately; that any delay in the effective date of this Act could work irreparable harm upon the citizenry as consumers of manufactured homes. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

20-29-101. Title.

This chapter shall be known as the “Arkansas Manufactured Home Recovery Act”.

History. Acts 1987, No. 346, § 1.

20-29-102. Definitions.

As used in this chapter, “commission” means the Arkansas Manufactured Home Commission.

History. Acts 1987, No. 346, § 2.

20-29-103. Disposition of funds.

(a) There is created on the books of the Treasurer of State, Auditor of State, and Chief Fiscal Officer of the State a trust fund to be known as the "Manufactured Housing Recovery Fund".

(b) The fund shall consist of trust fund receipts derived from fees assessed under this chapter by the Arkansas Manufactured Home Commission and shall be used for such purposes as are set out in §§ 20-29-104 — 20-29-110.

(c) No money shall be expended from the fund for any purpose except at the direction of the commission.

(d) The fund shall be administered, disbursed, and invested under the direction of the commission.

(e)(1) All incomes derived through investment of the fund shall be credited to the fund as investment income.

(2) For the purposes of investment, moneys invested and interest earned thereon shall be administered as trust funds pursuant to the State Treasury Management Law, § 19-3-501 et seq.

(f) Further, all moneys deposited to the fund shall not be subject to any deduction, tax, levy, or any other type of assessment.

History. Acts 1987, No. 346, § 4; 1988 (3rd Ex. Sess.), No. 9, § 1.

20-29-104. Assessments.

(a) The Arkansas Manufactured Home Commission shall collect assessment fees from manufacturers of manufactured homes in this state, manufacturers of manufactured homes in other states selling manufactured homes in this state, and installers and retailers.

(b) The commission shall collect the following assessment fees at the time of submission of initial certification or licensure applications:

- (1) Installer \$2,500.00 per location
- (2) Retailer 5,000.00 per location
- (3) Manufacturer 10,000.00 per location

(c)(1) If the balance of the Manufactured Housing Recovery Fund falls below two hundred fifty thousand dollars (\$250,000), then the commission may collect an annual assessment from each manufacturer of manufactured homes in this state, manufacturers of manufactured homes in other states selling manufactured homes in this state, and installers and retailers, and the annual assessment shall continue until such time as the fund is restored to a minimum level of two hundred fifty thousand dollars (\$250,000).

- (2) The annual assessments collected shall not exceed the following:
 - (A) Installer \$500.00 per location
 - (B) Retailer 1,000.00 per location
 - (C) Manufacturer 3,000.00 per location

(3) The assessments shall be collected within thirty-days' notice to all certified manufacturers, retailers, and licensed installers.

(d)(1) Any participant may receive a refund of its initial assessment after a two-year waiting period after it ceases operation of its business in this state if there are no claims pending against the participant, provided that:

(A) The participant shall notify the commission by certified mail within forty-five (45) days after the two-year waiting period and request that the refund or the assessment fee shall be forfeited; and

(B) The two-year waiting period shall begin on the participant's next certification or licensing anniversary date after the participant ceases operation of its business in this state.

(2) If the participant fails to satisfy the provisions found in subdivisions (d)(1)(A) and (B) of this section, the assessment fee shall remain in the fund.

(3) No interest shall accrue to the benefit of the participant.

History. Acts 1987, No. 346, §§ 3, 4; **Amendments.** The 2001 amendment 1991, No. 373, § 1; 2001, No. 1263, § 1. rewrote the section.

20-29-105. Complaints — Amount of damages.

(a) All consumer, licensee, installer, retailer, or manufacturer complaints shall be filed with the Arkansas Manufactured Home Commission. The commission shall determine, by hearing or whatever procedure it establishes, whether any standard adopted by the commission has been violated and, if so, the actual cost of repairs to the manufactured home, if any, suffered by the aggrieved party or parties.

(b) The amount of damages awarded by the commission shall be limited to the actual cost of repairs to the manufactured home and shall not include attorney's fees. On appeal to the circuit court from an award of the commission, the jurisdiction of the circuit court shall be limited to the actual cost of repairs to the manufactured home. The circuit court shall not have jurisdiction to award attorney's fees, court costs, or punitive or exemplary damages for claims covered by this chapter.

(c) The question of what constitutes a continuing series of violations shall be a matter solely within the discretion and judgment of the commission.

(d)(1) The commission shall by regulation establish procedures for the investigation and timely resolution of claims against the Manufactured Housing Recovery Fund involving participating manufacturers, retailers, and installers of manufactured homes regarding responsibility for the correction or repair of construction or installation defects in manufactured homes that are reported during the one-year period beginning on the date of installation of the home.

(2) The investigations, required corrections, and remedial actions shall be handled in accordance with the code and regulations promulgated pursuant to the code.

(3) The commission shall by regulation establish requirements for eligibility of claims against the fund.

History. Acts 1987, No. 346, § 3; 1991, No. 373, § 2; 2001, No. 1263, § 2. substituted “retailer” for “dealer” in (a); added (d); and made minor stylistic changes.

Amendments. The 2001 amendment

20-29-106. Payment of damages — Award from Manufactured Housing Recovery Fund when damages not paid.

(a) Upon a finding by the Arkansas Manufactured Home Commission that a standard has been violated, the commission shall direct the respondent licensee, retailer, installer, or manufacturer to correct the violation within a reasonable time, not to exceed ninety (90) days following the written decision of the commission.

(b) If the violation is not corrected within ninety (90) days following the written decision of the commission and if no appeal of the decision has been filed in the circuit court, the commission, upon request, shall pay from the Manufactured Housing Recovery Fund the actual cost of repairs to the manufactured home if:

(1) The amount is not in excess of ten thousand dollars (\$10,000) for any one (1) violation of the respondent licensee, installer, retailer, or manufacturer;

(2) The fund balance is sufficient to pay the award;

(3) The complainant has assigned all rights and claims that he or she has against the respondent to the commission; and

(4) The complainant agrees to subrogate the commission to all rights of the complainant to the extent of the payment.

(c) Nothing in this section shall obligate the fund for any amount in excess of twelve thousand five hundred dollars (\$12,500) per installer, twenty-five thousand dollars (\$25,000) per retailer, or seventy-five thousand dollars (\$75,000) per manufacturer with respect to the actions of any one (1) licensee, installer, retailer, or manufacturer.

History. Acts 1987, No. 346, § 3; 2001, No. 1263, § 3.

Amendments. The 2001 amendment substituted “retailer” for “dealer” in (a), (b)(1) and (c); substituted “correct the violation ... of the commission” for “pay the awarded amount to the complainant” in

(a); in the introductory language of (b), substituted “violation is not corrected” for “amount is not paid,” “ninety (90)” for “thirty (30)” and “actual cost of repairs to the manufactured home” for “amount of the award to the complainant”; and inserted “or she” in (b)(3).

CASE NOTES

In General.

The remedy of revocation of acceptance, due to a nonconformity which substantially impairs the value of a mobile home,

is not available under this section. *Cummings v. Big Mac Mobile Homes, Inc.*, 335 Ark. 216, 980 S.W.2d 550 (1998).

20-29-107. Appeals.

(a)(1) Appeals from a decision of the Arkansas Manufactured Home Commission shall be to the circuit court in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(2) The appeal shall stay that portion of the commission order which directs payment of the damages. Neither the respondent nor the commission shall be required to pay damages to the complainant until such time as a final order of the circuit court, Court of Appeals, or Supreme Court is issued.

(b) On appeal, the circuit court jurisdiction in awarding damages to be paid from the Manufactured Housing Recovery Fund shall be limited in amount to:

(1) The amount determined by the commission; or

(2) The limits set forth in § 20-29-106(c). The court shall not award attorney's fees or court costs to be paid by the fund.

History. Acts 1987, No. 346, § 3.

20-29-108. Suspension of license pending reimbursement or appeal.

(a)(1) The Arkansas Manufactured Home Commission shall suspend the license or certificate of each licensee, installer, retailer, or manufacturer until such time as the licensee, installer, retailer, or manufacturer reimburses award amounts paid on its behalf to the Manufactured Housing Recovery Fund, plus interest at a rate to be determined by the commission, but the interest is not to exceed ten percent (10%) per annum.

(2) The commission may permanently suspend the license or certificate of the respondent upon failure to pay an order of the commission or court.

(b) The commission may move the circuit court to suspend the license or certificate of the respondent during pendency of an appeal from a commission order.

History. Acts 1987, No. 346, § 3; 2001, No. 1263, § 4.

Amendments. The 2001 amendment,

in (a)(1), substituted "retailer" for "dealership" and "manufacturer" for "factory."

20-29-109. [Repealed.]

Publisher's Notes. This section, concerning suspension, revocation, or nonrenewal of license, was repealed by Acts

2001, No. 1263, § 5. The section was derived from Acts 1987, No. 346, § 3.

20-29-110. Enforcement.

(a) The Arkansas Manufactured Home Commission shall have the power to file suit in the Pulaski County Circuit Court to obtain a judgment for the amount of any penalty not paid within thirty (30) days of service of the order assessing the monetary penalty unless a court enters a stay pursuant to § 20-29-107.

(b) All hearings and appeals under this chapter shall be pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(c) Nothing in this chapter shall be construed to limit or restrict in any manner other civil or criminal remedies available under other laws to any person.

History. Acts 1987, No. 346, § 3.

20-29-111. Use of funds exceeding \$400,000.

On January 1 of any year, if the Manufactured Housing Recovery Fund exceeds four hundred thousand dollars (\$400,000), the Arkansas Manufactured Home Commission may approve the use of up to five percent (5%) of the fund balance above that amount for training and education programs, including, but not limited to, workshops, instruction manuals, audio and video tapes, and presentations.

History. Acts 1991, No. 373, § 3; 2001, No. 1263, § 6.

A.C.R.C. Notes. References to "this chapter" in §§ 20-29-101 — 20-29-110 may not apply to this section which was enacted subsequently.

Amendments. The 2001 amendment substituted "approve the use of up to five

percent (5%)" for "utilize up to twenty-five percent (25%)" and "instruction manuals" for "brochures," deleted "public relations projects" preceding "training" and substituted "video tapes, and presentations" for "video equipment and tapes, and slide presentations."

20-29-112. Regulations.

The Arkansas Manufactured Home Commission may establish regulations for implementation of this chapter.

History. Acts 1991, No. 373, § 3.

CHAPTER 30

SWIMMING POOLS

SECTION.

20-30-101. Definitions.

20-30-102. Penalty.

20-30-103. Authority of Division Health of the Department of Health and Human Services.

SECTION.

20-30-104. Permits — Application, renewal, posting, etc.

20-30-105. Permits — Suspension or revocation.

20-30-106. Permits — Fees.

20-30-107. Disposition of funds.

Cross References. Fee for review of swimming pool plans, § 20-7-123(b)(2).

Effective Dates. Acts 1987, No. 623, § 10: Apr. 4, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that due to current revenue shortfalls the services provided to the citizens of this State by the

Arkansas Department of Health are threatened; that these services protect the public health, welfare and safety; that the establishment of a fee system is necessary to keep needed services operational. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the

pubic peace, health and safety shall be in full force and effect from and after its passage and approval.”

RESEARCH REFERENCES

ALR. Validation of governmental regulation as to conditions and facilities of swimming pools as affecting liability in negligence. 79 ALR 4th 461.

20-30-101. Definitions.

As used in this chapter:

(1) “Critical items” means those aspects of operation or conditions of facilities or equipment which, if in violation, constitute the greatest hazards to health and safety, including imminent health hazards. These include:

- (A) Restriction of employees with infection;
- (B) Approved water supply of hot and cold running water under pressure;
- (C) Sewage and liquid waste disposal;
- (D) No cross-connection or back-siphonage;
- (E) Safety;
- (F) Excessive turbidity;
- (G) Failure to maintain proper chemical levels;
- (H) Failure or lack of filtration, sanitizing, and cleaning equipment and chemicals; and
- (I) Absence or lack of required supervisory personnel;

(2) “Division” means the Division of Health of the Department of Health and Human Services or, when the context requires, employees of the division;

(3) “Imminent health hazard” means any condition, deficiency, or practice which, if not corrected, is very likely to result in illness, injury, or loss of life to any person;

(4) “Person” means any individual, partnership, firm, corporation, agency, municipality, state or political subdivision, or the federal government and its agencies and departments; and

(5)(A) “Public swimming pool” means a structure of man-made materials, located either indoors or outdoors, used for bathing or swimming, together with buildings, appurtenances, and equipment used in connection therewith. Included are spa-type, wading, or special purpose pools or water recreation attractions, including, but not limited to, those operated at camps, child care facilities, cities, clubs, subdivisions, apartment buildings, counties, institutions, schools, motels, hotels, and mobile home parks, to which admission may be gained with or without payment of a fee.

(B) “Public swimming pool” shall not apply to private pools at single-family residences.

History. Acts 1987, No. 623, § 1; 1997, No. 285, § 1.

20-30-102. Penalty.

(a) Any person operating a public swimming pool in violation of this chapter or rules and regulations adopted pursuant to this chapter shall be guilty of a violation.

(b)(1) Upon conviction, that person shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500) for each offense.

(2) Each day of operation after sufficient notice has been given shall constitute a separate offense.

History. Acts 1987, No. 623, § 7; 2005, No. 1994, § 128.

Amendments. The 2005 amendment inserted the present subdivision designations; and, in (a), deleted “who fails or refuses to comply with any of the provi-

sions of this chapter or rules and regulations or otherwise operates a swimming pool” following “swimming pool,” inserted “adopted pursuant to this chapter” and substituted “violation” for “misdemeanor.”

20-30-103. Authority of Division Health of the Department of Health and Human Services.

The Division of Health of the Department of Health and Human Services is authorized:

(1) To carry out or cause to be carried out all provisions of this chapter;

(2) To collect all fees provided for in this chapter;

(3) To prescribe such rules and regulations governing the alteration, construction, sanitation, safety, and operation of public swimming pools as may be necessary to protect the health and safety of the public and to require every public swimming pool to comply with these rules and regulations;

(4) To inspect every public swimming pool in operation in the state to determine compliance with this chapter and rules and regulations;

(5) To issue or cause to be issued, suspend, and revoke permits to operate public swimming pools as provided in this chapter;

(6) To notify the owner, proprietor, or agent in charge of any public swimming pool of such changes or alterations as may be necessary to effect complete compliance with this chapter and rules and regulations governing the construction, alteration, and operation of the facilities and to close the facilities for failure to comply within specified times as provided in this chapter and rules and regulations; and

(7) To train, test, and certify qualified operators of public swimming pools.

History. Acts 1987, No. 623, § 2; 1997, No. 285, § 2.

20-30-104. Permits — Application, renewal, posting, etc.

(a) No person shall operate a public swimming pool who does not hold a valid permit issued to him or her by the Division of Health of the Department of Health and Human Services.

(b) Every person who shall engage in the business of operating a public swimming pool shall procure a permit from the division for each public swimming pool operated.

(c)(1) Any person planning to operate a public swimming pool shall make written application for a permit on forms provided by the division. The applications shall be completed and returned to the division with the proper permit fee.

(2) Prior to approval of the application for a permit, the division shall inspect the proposed facility to determine compliance with requirements of this chapter and rules and regulations. The division shall issue a permit to the applicant if the inspection reveals that the facility is in compliance with the requirements of this chapter and rules and regulations.

(d) Each permit for public swimming pools shall expire on the December 31 next following its issuance.

(e) Applications for renewal of permits for existing public swimming pools shall be mailed to the operator prior to January 1 of each year. When completed applications and the proper permit fees are returned, the division shall issue new permits to applicants.

(f) No permit shall be transferred from one (1) location or individual to another.

(g) Permits shall be posted in a conspicuous manner.

History. Acts 1987, No. 623, §§ 3, 4.

A.C.R.C. Notes. As enacted, subsection (b) of this section referred to "Every person now engaged in the business of

operating a public swimming pool and every person who shall thereafter engage in such a business"

20-30-105. Permits — Suspension or revocation.

The Division of Health of the Department of Health and Human Services may suspend or revoke any permit to operate a public swimming pool issued pursuant to this chapter if the division has reasonable cause to believe that the permittee is not in compliance with this chapter or the permittee has repeatedly violated requirements of this chapter.

History. Acts 1987, No. 623, § 5.

20-30-106. Permits — Fees.

(a) The annual permit fee to operate a public swimming pool shall be twenty-five dollars (\$25.00), except as outlined in subsection (b) of this section, due and payable each January 1. The permit fee shall be due and payable prior to beginning operation of any new public swimming pool and on each January 1 thereafter.

(b) If a public swimming pool and a food service establishment are owned and operated at the same location by a common individual, corporation, firm, or other entity, the annual swimming pool permit fee shall be ten dollars (\$10.00) due and payable each January 1.

(c) The permit fee shall be paid to the Division of Health of the Department of Health and Human Services before a permit is issued, and the permit shall be kept and displayed in a conspicuous manner, properly framed, at the pool for which it was issued.

History. Acts 1987, No. 623, § 6.

20-30-107. Disposition of funds.

(a) All fees and fines levied and collected under this chapter are declared to be special revenues and shall be deposited into the State Treasury to be credited to the Public Health Fund.

(b) Subject to such rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the Division of Health of the Department of Health and Human Services may transfer all unexpended funds relative to swimming pools that pertain to fees collected, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

History. Acts 1987, No. 623, § 8.

CHAPTER 31

ARKANSAS ELECTRICAL CODE AUTHORITY ACT

SECTION.

20-31-101. Title.

20-31-102. Definitions.

20-31-103. Exemptions.

20-31-104. Statewide standards — Enforcement of chapter.

SECTION.

20-31-105. Compliance required — Penalties.

20-31-101. Title.

This chapter may be known and may be cited as the "Arkansas Electrical Code Authority Act".

History. Acts 1991, No. 653, § 1.

20-31-102. Definitions.

As used in this chapter:

(1) "Board" means the Board of Electrical Examiners of the State of Arkansas;

(2) "Department" means the Department of Labor;

(3) "Director" means the Director of the Department of Labor;

(4) “Electrical facilities” means all wiring fixtures, appurtenances, and appliances for and in connection with a supply of electricity within or adjacent to any building, structure, or conveyance but not including the connection with a power supply meter or other power supply source;

(5) “Electrical work” means:

(A) Installations of electric conductors and equipment within or on public and private buildings or other structures, including recreational vehicles and floating buildings, and other premises such as yards, carnivals, parking and other lots, and industrial substations;

(B) Installations of conductors that connect to the supply of electricity; and

(C) Installations of other outside conductors on the premises;

(6)(A) “Electrician” means any person, individual, member, or employee of a firm, partnership, or corporation which is engaged in the business of or who for hire:

(i) Plans, lays out, and supervises the installation, maintenance, and extension of electrical conductors and equipment; or

(ii) Installs, erects, repairs or contracts to install, erect, or repair:

(a) Electrical wires or conductors to be used for the transmission of electric light, heat, power, or signaling purposes;

(b) Moulding, ducts, raceways, or conduits for the reception or protection of wires or conduits; or

(c) Any electrical machinery, apparatus, or systems to be used for electrical light, heat, power, or signaling purposes.

(B) “Electrician” also means an “electrical contractor”, a “master electrician”, a “journeyman electrician”, or an “industrial maintenance electrician” licensed under § 17-28-101 et seq.; and

(7) “Primary residence” means an unattached single-family dwelling used as the person’s primary place of residence.

History. Acts 1991, No. 653, § 2.

20-31-103. Exemptions.

(a) The following types of construction and structures shall be exempted from this chapter:

(1) Any construction, installation, maintenance, repair, or renovation by a public utility regulated by the Arkansas Public Service Commission, by a rural electric association or cooperative, or by a municipal utility, of any transmission or distribution lines or facilities incidental to their business and covered under other nationally recognized safety standards;

(2) Any construction, installation, maintenance, repair, or renovation of any nonresidential farm building or structure;

(3) Any construction or manufacture of manufactured homes covered by the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401 et seq.;

(4) Primary residences, whether existing or under construction, when the owner performs the electrical work thereon or the owner

performs the construction, maintenance, or installation of electrical facilities thereon.

(b) The exemption from compliance with the standards promulgated in this section shall not be referred to in any way, and it shall not be any evidence of the lack of negligence or the exercise of due care by a party at a trial of any civil action to recover damages by any party.

History. Acts 1991, No. 653, § 4.

20-31-104. Statewide standards — Enforcement of chapter.

(a) Beginning January 1, 1992, the Board of Electrical Examiners of the State of Arkansas is empowered to adopt rules and regulations to establish statewide standards for the construction, installation, and maintenance of electrical facilities and the performance of electrical work.

(b) The board shall adopt the National Electrical Code, 1990 edition, of the National Fire Protection Association.

(c) If there are updates and new editions to the National Electrical Code, the board shall, after notice and public hearing, adopt such changes and editions which it determines are necessary to ensure the public health and safety.

(d) The statewide standards shall guarantee a uniform minimum standard for the construction, installation, and maintenance of electrical facilities and for the performance of electrical work in:

(1) Any new public, business, or commercial buildings or structures constructed after July 15, 1991;

(2) Any new educational institutions or buildings constructed after July 15, 1991;

(3) Any new single-family or multifamily residence constructed after July 15, 1991; and

(4) Any other type of new construction undertaken in the State of Arkansas not specifically exempted under this chapter.

(e) The term “new” or “new construction” as used in this section shall apply to any new building or structure or any complete addition to or renovation of a building or structure where electrical conductors within are placed, added, or replaced in whole or part. It shall not apply to the repair or replacement of existing electrical conductors in existing buildings or structures or to minor repairs consisting of repairing or replacing outlets or minor working parts of electrical fixtures.

(f) It shall be the duty of the Department of Labor to administer and enforce this chapter.

History. Acts 1991, No. 653, § 3.

20-31-105. Compliance required — Penalties.

(a) Beginning January 1, 1992, unless specifically exempted under this chapter, no person or electrician shall perform any construction, installation, or maintenance of electrical facilities or perform electrical

work in this state except in compliance with the statewide standards promulgated under this chapter.

(b) Any person or electrician who does any construction, installation, and maintenance of electrical facilities or performs electrical work in this state without an exemption and not in compliance with this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars (\$50.00) and not more than five hundred dollars (\$500) or by imprisonment for not more than thirty (30) days, or both fine and imprisonment.

(c) In addition to the penalties in subsection (b) of this section, the Director of the Department of Labor is authorized:

(1) To petition any court of competent jurisdiction to enjoin or restrain any person or electrician who does any construction, installation, and maintenance of electrical facilities or performs electrical work without an exemption or who otherwise violates this chapter; and

(2) To seek the suspension or revocation by the Board of Electrical Examiners of the State of Arkansas of any "electrical contractor", a "master electrician", a "journeyman electrician" or an "industrial maintenance electrician" licensed under § 17-28-101 et seq. who is found to be in violation of this chapter.

History. Acts 1991, No. 653, § 5.

CHAPTER 32

DISPOSAL OF COMMERCIAL MEDICAL WASTE

SECTION.

- 20-32-101. Definitions.
- 20-32-102. On-site facility.
- 20-32-103. Penalties.
- 20-32-104. Disposition of fees and fines.
- 20-32-105. Authorization to stop vehicles
suspected of transporting
commercial medical waste.
- 20-32-106. Rules and regulations.

SECTION.

- 20-32-107. License to transport, treat, or
dispose.
- 20-32-108. Applications — Procedure
generally.
- 20-32-109. Location requirements.
- 20-32-110. Transportation requirements.
- 20-32-111. Scope of authority.
- 20-32-112. Violations — Penalties.

A.C.R.C. Notes. References to "this chapter" in §§ 20-32-101 — 20-32-111 may not apply to § 20-32-112 which was enacted subsequently.

Cross References. Commercial medical waste incineration facilities, § 8-6-1301 et seq.

Effective Dates. Acts 1993, No. 412, § 6: Mar. 9, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly that the amendments contained in this act are necessary in order to protect, not only the safety of the traveling public, but also the safety of the general public of this

state, by providing more effective safeguards for the transportation of medical waste in this state. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 179, § 38: Feb. 17, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint Interim Committee on Public Health, Welfare, and Labor and in its place estab-

lished the House Interim Committee and Senate Interim Committee on Public Health, Welfare, and Labor; that various sections of the Arkansas Code refer to the Joint Interim Committee on Public Health, Welfare, and Labor and should be corrected to refer to the House and Senate Interim Committees on Public Health, Welfare, and Labor; that this act so provides; and that this act should go into effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to

exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

20-32-101. Definitions.

As used in this chapter:

(1) "Commercial medical waste" means any medical waste transported from a generator to an off-site facility for disposal when the off-site disposal facility is engaged in medical waste disposal for profit;

(2) "Division" means the Division of Health of the Department of Health and Human Services;

(3) "Facility" means all contiguous land and structures, other appurtenances, and improvements on the land, used for treating, destroying, storing, or disposing of infectious waste. A facility may consist of several treatment, destruction, storage, or disposal operational units;

(4) "Generator" means any person producing medical waste;

(5) "Medical waste" means a waste from health-care-related facilities, which, if improperly treated, handled, or disposed of may serve to transmit an infectious disease and which includes the following:

(A) Pathological wastes — all human unfixed tissues, organs, and anatomical parts, other than intact skin, which emanate from surgeries, obstetrical procedures, dental procedures, autopsies, and laboratories. Such waste shall be exclusive of bulk formaldehyde and other preservative agents;

(B) Liquid or semiliquid blood such as human blood, human blood components and products made from human blood, for example, serum and plasma, and other potentially infectious materials, to include regulated human body fluids such as semen, vaginal secretions, cerebrospinal fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, any body fluid that is visibly contaminated with blood, and all body fluids when it is difficult or impossible to differentiate between body fluids, not to include urine or feces, which cannot be discharged into the collection system of a publicly owned treatment works within the generating facility;

(C) Contaminated items, to include dressings, bandages, packings, gauze, sponges, wipes, cotton rolls and balls, etc., which cannot be laundered and from which blood, blood components, or regulated

body fluids drip freely, or that would release blood or regulated body fluids in a liquid or semiliquid state if compressed or that are caked with dried blood or regulated body fluids and are capable of releasing these materials during handling:

(i) Disposable, single-use gloves such as surgical or examination gloves shall not be washed or decontaminated for reuse and are handled as a contaminated item; and

(ii) Protective coverings such as plastic wrap and aluminum foil used to cover equipment and environmental surfaces when removed following their contamination are considered a contaminated item;

(D) Microbiological waste — includes, but is not limited to, cells and tissue cultures, culture medium or other solution and stocks of infectious agents, organ cultures, culture dishes, devices used to transfer, inoculate, and mix cultures, paper and cloth which have come in contact with specimens or cultures, and discarded live vaccines; and

(E) Contaminated sharps, which includes, but is not limited to, hypodermic needles, intravenous tubing with needles attached, syringes with attached needles, razor blades used in surgery, scalpel blades, Pasteur pipettes, broken glass from laboratories, and dental wires.

(6) “Off-site” means any facility which is not on-site;

(7)(A) “On-site” means a facility on the same or adjacent property.

(B) “Adjacent” as used in this subdivision (7) means real property within four hundred (400) yards from the property boundary of the existing facility;

(8) “Person” means an individual or any legal entity;

(9) “Transport” means the movement of medical waste from the generator to any intermediate point and finally to the point of treatment or disposal; and

(10) “Treater or disposer” means any facility as defined in subdivision (3) of this section or “commercial medical waste incineration facility” as defined in § 8-6-1302.

History. Acts 1992 (1st Ex. Sess.), No. 41, § 1; 1993, No. 491, § 2; 1993, No. 861, § 2.

20-32-102. On-site facility.

A health care facility accepting medical waste for disposal from the physicians and surgeons who are on the staff of the health care facility shall be classified as an on-site facility and shall not be subject to this chapter.

History. Acts 1992 (1st Ex. Sess.), No. 41, § 4.

20-32-103. Penalties.

(a) Any person who violates any provision of this chapter shall be guilty of a felony. Upon conviction, that person shall be subject to imprisonment for not more than one (1) year, or a fine of not more than twenty-five thousand dollars (\$25,000), or both.

(b) In addition, any person who violates any provision of this chapter may be subject to a civil penalty by the board. The penalty shall not exceed ten thousand dollars (\$10,000) for each violation.

History. Acts 1992 (1st Ex. Sess.), No. 41, § 5.

20-32-104. Disposition of fees and fines.

(a) All fees and fines levied and collected under §§ 20-32-103 and 20-32-107 are declared to be special revenues and shall be deposited into the State Treasury and credited to the Public Health Fund to be used exclusively for the enforcement of laws and regulations pertaining to the segregation, packaging, storage, transportation, treatment, and disposal of medical waste.

(b) Subject to such rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the Division of Health of the Department of Health and Human Services may transfer all unexpended funds relative to the regulation of commercial medical waste that pertain to fees and fines collected, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

History. Acts 1992 (1st Ex. Sess.), No. 41, § 6.

20-32-105. Authorization to stop vehicles suspected of transporting commercial medical waste.

(a)(1) The Department of Arkansas State Police and the enforcement officers of the Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department may stop vehicles suspected of transporting commercial medical waste to assure that all required permits for transporting the commercial medical waste have been obtained and to enforce all laws and regulations relating to the transportation of commercial medical waste.

(2) The Department of Arkansas State Police may administer and supervise the program of inspection of vehicles which transport commercial medical waste and have a gross vehicle weight rating of less than ten thousand pounds (10,000 lbs.). The Department of Arkansas State Police shall collect a fee of fifty dollars (\$50.00) for each inspection. The fee shall be deposited as special revenues into the State Treasury and distributed to the credit of the State Police Fund to defray the costs of administering and supervising the inspection program.

(b) The enforcement officers of the division may conduct vehicle safety inspections of those vehicles transporting or intended to be utilized to transport commercial medical waste, to inquire into the history of any safety or equipment regulation violations of the transporter in any state, and to advise the Division of Health of the Department of Health and Human Services of the results of such inspections and inquiries.

History. Acts 1992 (1st Ex. Sess.), No. 41, § 8; 1993, No. 412, § 1.

20-32-106. Rules and regulations.

(a) The Division of Health of the Department of Health and Human Services may regulate the segregation, packaging, storage, transportation, treatment, and disposal of commercial medical waste from health-care-related facilities.

(b) These regulations shall include:

(1) Criteria for issuing operational licenses to treaters or disposers, and transporters of commercial medical waste;

(2) Criteria for issuing permits and permit modifications to facilities;

(3) Developing a system for record keeping by any person generating, transporting, receiving, treating, or disposing of commercial medical waste;

(4) Acceptable methods of treatment and disposal of commercial medical waste;

(5) Requirements for the segregation, packaging, and storage of commercial medical waste;

(6) Criteria for the development of an operating plan for the handling and disposal of commercial medical waste; and

(7) Requirements for the inspection of any facility generating, storing, incinerating, or disposing of commercial medical waste.

(c) All rules and regulations promulgated pursuant to this chapter shall be reviewed by the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor or appropriate subcommittees thereof.

History. Acts 1992 (1st Ex. Sess.), No. 41, §§ 2, 7; 1993, No. 491, § 3; 1993, No. 861, § 3; 1997, No. 179, § 30.

20-32-107. License to transport, treat, or dispose.

(a) No person may transport, treat, or dispose of commercial medical waste without first obtaining an operating license from the Division of Health of the Department of Health and Human Services.

(b) The treater or disposer, or transporter shall submit an application for an operating license and an application fee of two hundred fifty dollars (\$250).

(c) Upon issuance of the operating license, the treater or disposer, or transporter shall pay a license fee of no more than five dollars (\$5.00) per ton.

(d) The division shall issue operating licenses for a period of one (1) year.

(e)(1) If the treater or disposer, or transporter has a history of noncompliance with any law or regulation of this state or any other jurisdiction, particularly those laws or regulations pertaining to the environment and the protection of the health and safety of the public, the division may refuse to issue an operating license.

(2) If a history of noncompliance is discovered after the operating license has been issued, the division may revoke the license.

History. Acts 1992 (1st Ex. Sess.), No. 41, § 3; 1993, No. 491, § 4; 1993, No. 861, § 4.

20-32-108. Applications — Procedure generally.

(a) This section shall not apply to commercial medical waste incineration facilities which are required to comply with the provisions for obtaining a permit under § 8-6-1301 et seq.

(b) No person shall operate or construct a commercial medical waste facility without submitting an application for a permit or permit modification to the Division of Health of the Department of Health and Human Services. No permit or permit modification shall be issued by the division for any facility unless the division approves both the site of the facility and the technological process to be used by the facility for the treatment and disposal of commercial medical waste.

(c) The division may levy up to one hundred dollars (\$100) per hour not to exceed five thousand dollars (\$5,000) for application processing costs incurred by the division.

(d) Any person applying for a permit or a permit modification to construct and operate a facility shall complete the following criteria at least thirty (30) days prior to submitting a permit application to the division:

(1) Written notification by certified mail to each property owner and resident of any property adjacent to the proposed site of the intent to apply for a permit or permit modification; and

(2) Publication of a public notice in the largest newspaper published in each county where the property which is the subject matter of the proposed facility permit or permit modification is located and in at least one (1) newspaper of statewide circulation of the intent to apply for a permit or permit modification to construct and operate a facility.

(e) The division shall provide written notice by certified mail of the proposed permit or permit modification to the mayor of the city and the county judge of the county where the property which is the subject matter of the permit application is located.

(f) Prior to the issuance of a final permit, the division shall conduct a public hearing in the county in which the facility is to be located.

History. Acts 1993, No. 491, § 5; 1993, No. 861, § 5; 1999, No. 150, § 1.

20-32-109. Location requirements.

No applications shall be accepted nor shall permits be issued pursuant to § 20-32-108 by the Division of Health of the Department of Health and Human Services for the construction or operation of a facility in which any of the following factors is present:

(1) The location of the facility is within a “regulatory floodway”, as adopted by communities participating in the national flood program managed by the Federal Emergency Management Agency;

(2) The location of the facility overlies any portion of a significant surface or subsurface sand and gravel aquifer for its primary recharge zone or a high-yield bedrock aquifer;

(3) The location of the facility could pose a threat to fisheries, wildlife, or other natural resources; or

(4) The location of the facility does not comply with zoning regulations of the locality in which the facility is proposed.

History. Acts 1993, No. 491, § 5; 1993, No. 861, § 5.

20-32-110. Transportation requirements.

(a) No operational licenses shall be issued to any transporter of commercial medical waste unless that transporter shows evidence that:

(1) Each vehicle used for the transportation of commercial medical waste is covered by liability insurance in an amount specified by the Division of Health of the Department of Health and Human Services; and

(2) The liability insurance is issued by a company authorized to do business in this state by the State Insurance Department.

(b) Companies providing liability insurance for any transporter of commercial medical waste shall notify the division of the cancellation of any policy providing liability coverage to a transporter at least thirty (30) days prior to cancellation.

History. Acts 1993, No. 491, § 5; 1993, No. 861, § 5.

20-32-111. Scope of authority.

Nothing in this subchapter shall be construed to affect the authority of cities and counties to enact zoning regulations or procedures that control the location of medical waste facilities or sites.

History. Acts 1993, No. 491, § 5; 1993, No. 861, § 5.

20-32-112. Violations — Penalties.

(a) Any person or carrier, or any officer, employee, agent, or representative thereof, while operating any vehicle transporting medical waste or which is authorized to transport medical waste, who shall violate any of the regulations, including safety regulations, prescribed or hereafter prescribed by the State Highway Commission pursuant to § 23-1-101 et seq. or who shall violate any regulation of the Division of Health of the Department of Health and Human Services that specifically relates to the transportation of medical waste shall be guilty of a violation.

(b) Upon conviction, that person or carrier, or officer, employee, agent, or representative thereof, shall be fined not more than five hundred dollars (\$500) for the first offense and not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) for any subsequent offense.

History. Acts 1993, No. 412, § 2; 2005, No. 1994, § 129.

A.C.R.C. Notes. References to “this chapter” in §§ 20-32-101 — 20-32-111 may not apply to this section which was enacted subsequently.

Amendments. The 2005 amendment, in (a), substituted “the Arkansas” for “this” and “violation” for “misdemeanor.”

CHAPTER 33 ELDER CARE

SUBCHAPTER

1. GENERAL PROVISIONS.
2. CRIMINAL RECORDS CHECKS FOR PERSONS CARING FOR THE ELDERLY.

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

SUBCHAPTER 2 — CRIMINAL RECORDS CHECKS FOR PERSONS CARING FOR THE ELDERLY

SECTION.

- 20-33-201. Definitions.
- 20-33-202. Mandatory criminal records checks for operators.
- 20-33-203. Mandatory criminal records checks for applicants, ElderChoices providers, and employees.
- 20-33-204. Evidence of records checks.
- 20-33-205. Provisional licenses — Disqualification from employment — Resubmission of applications — Denial or revocation — Penalties.

SECTION.

- 20-33-206. Request for records check — Requirement.
- 20-33-207. Duties of Identification Bureau and licensing agencies.
- 20-33-208. Regulations — Remedies for failure to comply — Challenges to agency determinations.
- 20-33-209. Confidentiality.
- 20-33-210. Immunity.
- 20-33-211. Exclusions — Licensed professionals — Completion of criminal history check.

SECTION.

20-33-212. Effective date — Criminal his-

tory checks for incumbent operators and employees.

Effective Dates. Acts 1997, No. 990, § 16: Oct. 1, 1997. Emergency clause provided: "It is hereby found and determined by the Eighty-First General Assembly, that sometimes persons providing care to the elderly or individuals with disabilities have criminal histories that impair their ability to provide adequate care; that injuries inflicted on the elderly or individuals with disabilities by caretakers in positions of trust are devastating to the sense of well-being in our communities; that it is crucial to the health, safety, and welfare of the citizens of the State of Arkansas that a criminal history check be conducted on all persons caring for the elderly or individuals with disabilities so that those persons who are a danger can be identified; that this act so provides. Therefore an emergency is declared to exist and this act being immediately necessary for the pres-

ervation of the public peace, health and safety shall become effective on October 1, 1997."

Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act includes technical corrects to Act 923 of 2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and Compensation Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid confusion this act must also effective on July 1, 2003. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003."

20-33-201. Definitions.

As used in this subchapter:

(1) "Bureau" means the Identification Bureau of the Department of Arkansas State Police;

(2) "Care" means treatment, services, assistance, education, training, instruction, or supervision for which the care-giving person or entity is reimbursed either directly or by arrangement with a qualified entity or receives reimbursement or payment either directly or indirectly from Medicaid;

(3) "Determination" means a licensing agency's determination that an applicant or employee is or is not disqualified from employment or that a qualified entity is disqualified from licensure based on the criminal history of the operator;

(4) "Elderly" means persons sixty-five (65) years of age or older;

(5) "Employee" means any person who provides care to the elderly or to individuals with disabilities, or both, on behalf of, under the supervision of, or by arrangement with a qualified entity or any person employed by a qualified entity, including persons provided by or pursuant to contract with a private placement agency or contract staffing agency, unless the person is a family member or a volunteer or works in an administrative capacity and does not provide direct patient care;

(6) "Index" means the database maintained by the Identification Bureau of the Department of Arkansas State Police of criminal records

checks that have been conducted on applicants for employment with and employees of qualified entities or ElderChoices providers;

(7) "Individuals with disabilities" means persons with mental or physical impairments who require assistance to perform one (1) or more of the following tasks of daily living:

- (A) Feeding;
- (B) Mobility;
- (C) Toileting; or
- (D) Medication;

(8) "Licensing agency" means the government agency charged with licensing the operator or qualified entity to provide care to the elderly or to individuals with disabilities, or both;

(9) "National criminal history check" means a review of national criminal records maintained by the Federal Bureau of Investigation based on fingerprint identification or other positive identification methods;

(10) "Operator" means a person responsible for signing an application for an initial or renewal license to operate a qualified entity;

(11) "Qualified entity" means a long-term care facility as defined by § 20-10-101 or § 20-10-702, a home health care service as defined by § 20-10-801, a hospice service as defined by § 20-7-117, any individual or entity who provides services in the home of individuals and who is designated by the Division of Aging and Adult Services of the Department of Health and Human Services as an ElderChoices provider, and any employment agency that hires or procures, on behalf of another entity or organization, individuals who provide services in the home and are designated by the division as ElderChoices providers whether or not the entity has applied for or possesses any license or certification necessary for operation. In no event shall an individual or entity hired and paid by the recipient be considered a qualified entity or be subject to this subchapter unless the individual or entity is otherwise enrolled as a Medicaid provider of ElderChoices services;

(12) "Report" means a statement of the criminal history of an applicant, employee, ElderChoices provider, or operator issued by the Identification Bureau of the Department of Arkansas State Police;

(13) "Requesting agency" means the government agency charged with certifying the individual or qualified entity to provide care to the elderly or to individuals with disabilities, or both; and

(14) "State criminal history check" means a review of state criminal records conducted by the Identification Bureau of the Department of Arkansas State Police.

History. Acts 1997, No. 990, § 1; 1999, No. 1409, § 1; 1999, No. 1467, § 1.

20-33-202. Mandatory criminal records checks for operators.

(a) When an operator applies for a license to operate a qualified entity, the operator shall complete a criminal history check form and

shall request the Identification Bureau of the Department of Arkansas State Police to conduct a state criminal history check and a national criminal history check on the operator. The operator shall attach evidence of the request for a criminal history check to the application for licensure of the qualified entity. The bureau shall conduct a state criminal history check and a national criminal history check on the operator, and upon completion of the criminal history check, the bureau shall issue a report to the licensing agency of the qualified entity. The licensing agency shall determine whether the qualified entity is disqualified from licensure based on the report of the operator's criminal history and forward its determination to the qualified entity seeking licensure.

(b) This section shall only apply to the first application signed by an operator, provided that the operator has served continuously in a position as an operator with not more than a sixty-day interruption in such service.

History. Acts 1997, No. 990, § 2.

20-33-203. Mandatory criminal records checks for applicants, ElderChoices providers, and employees.

(a)(1) When a person applies for a position as an employee of a qualified entity and if the qualified entity intends to make an offer of employment to the applicant, the applicant shall complete a criminal history check form obtained from the qualified entity and shall submit the form to the qualified entity as part of the application process to be an employee.

(2) If the qualified entity intends to make an offer of employment to the applicant, the qualified entity shall within five (5) business days of that decision forward the criminal history check form to the Identification Bureau of the Department of Arkansas State Police accompanied by appropriate payment and request the bureau to review the bureau's index of criminal history checks on persons caring for the elderly or individuals with disabilities. Prior to an ElderChoices provider's providing care, the provider shall complete a criminal history check form obtained from the Division of Aging and Adult Services of the Department of Health and Human Services and shall submit the completed form with appropriate payment to the bureau and request the bureau to review the bureau's index of criminal history checks on persons caring for the elderly or individuals with disabilities.

(3) Within three (3) business days of the receipt of a request to review the index, the bureau shall notify the qualified entity and the division whether the index contains any criminal history records on the applicant or ElderChoices provider.

(4)(A) A qualified entity may make an offer of temporary employment to an applicant, pending receipt of notification from the bureau after checking the database of the licensing agency.

(B) If no criminal history records regarding the applicant are found in the index, then the qualified entity may continue to temporarily employ the applicant while the bureau completes a criminal history check and the licensing agency determines whether the applicant is disqualified from employment with the qualified entity.

(C)(i) If a criminal history record regarding the applicant is found in the bureau's index, then the applicant is temporarily disqualified from employment until the licensing agency issues a determination.

(ii) If the licensing agency issues a determination that the applicant is not qualified, then the qualified entity may temporarily employ the applicant while the bureau completes a criminal history check.

(b)(1) Except as provided in subdivision (b)(2) of this section, the bureau shall conduct a state criminal history check and a national criminal history check on an applicant, ElderChoices provider, or employee upon receiving a criminal history check request from a qualified entity, a requesting agency, or the division.

(2) If the qualified entity, requesting agency, the division, or the ElderChoices provider can verify that the applicant or ElderChoices provider has been employed within the State of Arkansas to provide care to the elderly or to individuals with disabilities, or both, within sixty (60) days before the application or request from the agency or the division or has lived continuously in the State of Arkansas for the past five (5) years, the bureau shall conduct only a state criminal history check on the applicant or ElderChoices provider.

(3) When the qualified entity determines the need to utilize temporary employees provided by a private placement agency or other contract staffing company, it shall be the responsibility of the private placement agency or contract staffing agency to initiate the criminal background check as provided by this subchapter, prior to the placement of the person in the qualified entity's facility, and at all times the private placement agency or contract staffing agency must be able to document the pending background check or the final determination if requested by the Office of Long-Term Care.

(c)(1) Upon completion of a criminal history check on an applicant, ElderChoices provider, or employee, the bureau shall issue a report to the licensing or requesting agency.

(2) The licensing agency shall determine whether the applicant or employee is disqualified from employment with the qualified entity and shall forward its determination to the qualified entity.

(3)(A) If the licensing agency determines that an applicant or employee is disqualified from employment, then the qualified entity shall terminate the employment of the employee or shall deny employment to the applicant.

(B) If the requesting agency determines that the ElderChoices provider is disqualified from providing care, the requesting agency shall forward its determination to the provider, and the provider shall

be prohibited from providing care to the elderly or to individuals with disabilities.

(d) Before making a temporary or permanent offer of employment, a qualified entity shall inform applicants and employees that continued employment is contingent upon the results of periodic criminal records checks and that the applicant or employee has the right to obtain a copy of the report from the bureau.

History. Acts 1997, No. 990, § 3; 1999, No. 1409, § 2; 1999, No. 1467, § 2; 2001, No. 1710, § 1.

Amendments. The 2001 amendment redesignated former (c)(3) as present

(c)(3)(A) and (B) and made related changes; and deleted “subject to the waiver provisions of § 20-33-205(d)” from the end of present (c)(3)(A) and (c)(3)(B).

20-33-204. Evidence of records checks.

Each qualified entity shall maintain on file, subject to inspection by the Arkansas Crime Information Center, the Identification Bureau of the Department of Arkansas State Police, or the licensing agency, evidence that criminal records checks have been initiated on all operators and employees and a copy of each determination received from the licensing agency.

History. Acts 1997, No. 990, § 4.

20-33-205. Provisional licenses — Disqualification from employment — Resubmission of applications — Denial or revocation — Penalties.

(a) Except as provided in subsection (c), subsection (d), or subsection (f) of this section:

(1) A licensing agency shall issue a forty-five-day provisional license to a qualified entity whose operator has been found guilty or has pleaded guilty or nolo contendere to any of the offenses listed in subsection (b) of this section;

(2) A licensing agency shall issue a determination that a person is disqualified from employment with a qualified entity if the person has been found guilty or pleaded guilty or nolo contendere to any of the offenses listed in subsection (b) of this section; and

(3)(A) A qualified entity shall not knowingly employ a person who has pleaded guilty or nolo contendere to or has been found guilty of any of the offenses listed in subsection (b) of this section by any court in the State of Arkansas or of any similar offense by a court in another state or of any similar offense by a federal court.

(B) Except as provided in subsection (c), subsection (d), or subsection (f) of this section:

(i) A licensing agency shall issue a forty-five-day provisional license to a qualified entity whose operator has been found guilty of or pleaded guilty or nolo contendere to any of the offenses listed in subsection (b) of this section; and

(ii) A licensing agency shall issue a determination that a person is disqualified from employment with a qualified entity if the person has been found guilty of or pleaded guilty or nolo contendere to any of the offenses listed in subsection (b) of this section. A requesting agency shall issue a determination that a person or ElderChoices provider is disqualified from providing care to the elderly or to an individual with a disability, or both, if the person or provider has been found guilty of or pleaded guilty or nolo contendere to any of the offenses listed in subsection (b) of this section.

(b)(1) Capital murder as prohibited in § 5-10-101;

(2) Murder in the first degree as prohibited in § 5-10-102 and murder in the second degree as prohibited in § 5-10-103;

(3) Manslaughter as prohibited in § 5-10-104;

(4) Negligent homicide as prohibited in § 5-10-105;

(5) Kidnapping as prohibited in § 5-11-102;

(6) False imprisonment in the first degree as prohibited in § 5-11-103;

(7) Permanent detention or restraint as prohibited in § 5-11-106;

(8) Robbery as prohibited in § 5-12-102;

(9) Aggravated robbery as prohibited in § 5-12-103;

(10) Battery as prohibited in §§ 5-13-201 — 5-13-203;

(11) Aggravated assault as prohibited in § 5-13-204;

(12) Introduction of controlled substance into the body of another person as prohibited in § 5-13-210;

(13) Terroristic threatening in the first degree as prohibited in § 5-13-301(a);

(14) Rape as prohibited in § 5-14-103;

(15) Sexual indecency with a child as prohibited in § 5-14-110;

(16) Sexual assault in the first degree, second degree, third degree, and fourth degree as prohibited in §§ 5-14-124 — 5-14-127;

(17) Incest as prohibited in § 5-26-202;

(18) Offenses against the family as prohibited in §§ 5-26-303 — 5-26-306;

(19) Endangering the welfare of an incompetent person in the first degree as prohibited in § 5-27-201;

(20) Endangering the welfare of a minor in the first degree as prohibited in § 5-27-203;

(21) Permitting child abuse as prohibited in § 5-27-221(a)(1) and (3);

(22) Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, or use of a child or consent to use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child as prohibited in §§ 5-27-303 — 5-27-305, 5-27-402, and 5-27-403;

(23) Felony adult abuse as prohibited by § 5-28-103;

(24) Theft of property as prohibited in § 5-36-103;

(25) Theft by receiving as prohibited in § 5-36-106;

- (26) Arson as prohibited in § 5-38-301;
- (27) Burglary as prohibited in § 5-39-201;
- (28) Felony violation of the Uniform Controlled Substances Act, § 5-64-101 — § 5-64-608, as prohibited in § 5-64-401;
- (29) Promotion of prostitution in the first degree as prohibited in § 5-70-104;
- (30) Stalking as prohibited in § 5-71-229;
- (31) Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401 to commit any of the offenses listed in this subsection;
- (32) Forgery as prohibited in § 5-37-201;
- (33) Breaking or entering as prohibited in § 5-39-202;
- (34) Obtaining a controlled substance by fraud as prohibited in § 5-64-403;
- (35) Computer child pornography as prohibited in § 5-27-603; and
- (36) Computer exploitation of a child in the first degree as prohibited in § 5-27-605.

(c) A qualified entity that is issued a provisional license based on the criminal history of the operator may resubmit the application for licensure with a new operator. If the qualified entity does not resubmit the application within fifteen (15) days of the issuance of the provisional license, then the qualified entity's license shall be immediately denied or revoked.

(d)(1) The provisions of this section shall not be waived by the licensing or requesting agency.

(2)(A) Except as provided in subdivision (d)(2)(B) of this section, a conviction or plea of guilty or nolo contendere for a felony or misdemeanor offense listed in subsection (b) of this section shall not disqualify an applicant for employment if the date of conviction of the offense is at least ten (10) years from the date of the application and the individual has no criminal convictions of any type or nature during the ten-year period.

(B) Because of the serious nature of the offenses and the close relationship to the type of work that is to be performed, the following shall result in permanent disqualification of employment:

- (i) Capital murder as prohibited in § 5-10-101;
- (ii) Murder in the first degree as prohibited in § 5-10-102 and murder in the second degree as prohibited in § 5-10-103;
- (iii) Kidnapping as prohibited in § 5-11-102;
- (iv) Rape as prohibited in § 5-14-103;
- (v) Sexual assault in the first degree as prohibited in § 5-14-124 and sexual assault in the second degree as prohibited in § 5-14-125;
- (vi) Endangering the welfare of an incompetent person in the first degree as prohibited in § 5-27-201;
- (vii) Felony adult abuse as prohibited by § 5-28-103; and
- (viii) Arson as prohibited in § 5-38-301.

(e)(1) A qualified entity shall not be disqualified from licensure when the operator has been found guilty of or has pleaded guilty or nolo

contendere to a misdemeanor if the offense did not involve exploitation of an adult, abuse of a person, neglect of a person, theft, or sexual contact.

(2) An applicant, ElderChoices provider, or employee shall not be disqualified from permanent employment or providing care to the elderly or to an individual with a disability, or both, when the applicant, provider, or employee has been found guilty of or has pleaded guilty or nolo contendere to a misdemeanor if the offense did not involve exploitation of an adult, abuse of a person, neglect of a person, theft, or sexual contact.

(f) For purposes of this section, an expunged record of a conviction or plea of guilty or nolo contendere to an offense listed in subsection (b) of this section shall not be considered a conviction, guilty plea, or nolo contendere plea to the offense unless the offense is also listed in subdivision (d)(2)(B) of this section.

(g) If an operator or qualified entity fails or refuses to cooperate in obtaining criminal records checks, such circumstances shall be grounds to deny or revoke the qualified entity's license or other operating authority, provided the process of obtaining criminal records checks shall not delay the process of the application for a license or other operational authority.

(h) Any unlicensed qualified entity violating this subchapter shall be guilty of a Class A misdemeanor for each violation.

(i) To the extent that there is any conflict with § 17-1-103, this section shall supersede § 17-1-103.

(j) This section shall not apply to teacher licensure or certification or nursing licensure and certification as governed by §§ 6-17-410 and 17-87-312, respectively.

History. Acts 1997, No. 990, § 5; 1999, No. 1409, §§ 3-5; 2001, No. 1710, § 2; 2003, No. 1087, § 19; 2003, No. 1382, § 1; 2003, No. 1473, § 40; 2005, No. 1923, § 6; 2005, No. 1994, § 488.

Amendments. The 2001 amendment rewrote the section.

The 2003 amendment by No. 1087 added present (b)(35) and (b)(36).

The 2003 amendment by No. 1382 rewrote (b)(14); deleted former (b)(15) and redesignated the remaining subdivisions accordingly; rewrote present (b)(16); deleted "§ 5-27-304" in (b)(22); inserted "§ 5-64-101 et seq." in (b)(28); rewrote (d)(2)(B)(iv) and (v); and made stylistic changes.

The 2003 amendment by No. 1473 inserted "murder in the" preceding "second degree" in (d)(2)(B)(ii).

The 2005 amendment by No. 1923 substituted "subsections (c), (d), or (f)" for "subsection (c)" in (a) and (a)(3)(B); in (d)(2)(A), substituted "or plea of guilty or nolo contendere for a felony or misdemeanor" for "for an" and deleted the former last sentence; inserted present (f) and (i); and redesignated former (f) and (g) as present (g) and (h).

The 2005 amendment by No. 1994 added present (j).

RESEARCH REFERENCES

UALR L.J. Survey of Legislation, 2003 Arkansas General Assembly, Criminal

Law, Computer Crimes, 26 UALR L.J. 361.

CASE NOTES

Disqualification.

Where health care workers argued that nothing in this section gave the Office of Long-Term Care authority to act contrary to a “second chance” policy to provide certain eligible individuals a clean slate to make a positive contribution to society, their argument ignored the express purpose of Arkansas’s elder care law, which recognized that sometimes persons pro-

viding care to the elderly or individuals with disabilities had criminal histories that impaired their ability to provide adequate care; and those offenses included theft of property, which was the offense committed by the workers. *Doe v. Ark. Dep’t of Human Servs.*, — Ark. —, — S.W.3d —, 2004 Ark. LEXIS 328 (May 20, 2004).

20-33-206. Request for records check — Requirement.

(a) A request for a state criminal history records check on a person shall include a completed statement that:

(1) Contains the name, address, and date of birth appearing on a valid identification document issued by a government entity to the person who is the subject of the check;

(2) Indicates whether the person has been found guilty of or pled guilty or nolo contendere to a crime, and if so, includes a description of the crime and the particulars of the finding of guilt or the plea;

(3) Notifies the person that qualified entities may request reports of state criminal history checks;

(4) Consents to disclosure of reports and determinations as provided by this subchapter;

(5) Notifies the person that prior to the completion of a state criminal history check, the qualified entity may choose to deny the employee unsupervised access to a person to whom the qualified entity provides care;

(6) Informs the person how to object to the content of reports; and

(7) Contains the notarized signature of the person who is the subject of the check.

(b) Each request for a national criminal history check shall conform to the requirements for a state criminal history check and shall include a complete set of fingerprints.

History. Acts 1997, No. 990, § 6.

20-33-207. Duties of Identification Bureau and licensing agencies.

(a) After receipt of a request for a criminal history check, the Identification Bureau of the Department of Arkansas State Police shall make reasonable efforts to respond to requests for state criminal history checks within twenty (20) calendar days and to respond to requests for national criminal history checks within ten (10) calendar days after the receipt of a national criminal history check from the Federal Bureau of Investigation.

(b) Upon completion of a criminal records check, the bureau shall forward all information obtained concerning the applicant or employee to the Arkansas Crime Information Center.

(c) The bureau shall maintain an index of the results of each operator's, employee's, or applicant's criminal history check. The bureau shall furnish a report to the licensing agency upon completion of each criminal history check and upon request of the licensing agency.

(d) The bureau shall develop forms to be used for criminal history checks conducted under this subchapter.

(e) Each licensing agency shall develop and maintain a database of determinations regarding applicants for employment with and employees of qualified entities that are within the purview of the licensing agency. The database may be accessed by telephone.

History. Acts 1997, No. 990, § 7.

20-33-208. Regulations — Remedies for failure to comply — Challenges to agency determinations.

(a) The Arkansas Crime Information Center, the Identification Bureau of the Department of Arkansas State Police, and each licensing or requesting agency shall cooperate to prepare forms and promulgate consistent regulations as necessary to implement this subchapter.

(b) Each licensing agency shall establish remedies to be imposed on the qualified entities licensed by the respective agencies for failure to comply with this subchapter.

(c) Each licensing or requesting agency shall establish a procedure for operators, applicants, employees, ElderChoices providers, and qualified entities to challenge determinations.

(d) A person may challenge the completeness or accuracy of criminal history information pursuant to § 12-12-1013.

History. Acts 1997, No. 990, § 8; 1999, No. 1409, § 6.

20-33-209. Confidentiality.

All reports obtained under this subchapter are confidential and are restricted to the exclusive use of the Arkansas Crime Information Center, the Identification Bureau of the Department of Arkansas State Police, the licensing or requesting agency, and the person who is the subject of the report. The information contained in reports shall not be released or otherwise disclosed to any other person or agency except by court order and is specifically exempt from disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq., except that the licensing or requesting agency is authorized and directed to furnish determinations to qualified entities or ElderChoices providers.

History. Acts 1997, No. 990, § 9; 1999, No. 1409, § 7.

20-33-210. Immunity.

Individuals and qualified entities are immune from suit or liability for damages for acts or omissions, other than malicious acts or omissions, occurring in the performance of duties imposed by this subchapter.

History. Acts 1997, No. 990, § 10.

20-33-211. Exclusions — Licensed professionals — Completion of criminal history check.

(a) This subchapter shall not apply to persons who render care subject to professional licenses obtained pursuant to:

(1) Section 17-27-101 et seq., regarding licensed professional counselors;

(2) Section 17-103-101 et seq., regarding social workers;

(3) Section 17-82-101 et seq., regarding dentists;

(4) Section 17-87-101 et seq., regarding nurses;

(5) Section 17-88-101 et seq., regarding occupational therapists;

(6) Section 17-92-101 et seq., regarding pharmacists;

(7) Section 17-93-101 et seq., regarding physical therapists;

(8) Section 17-95-201 et seq., regarding physicians and surgeons;

(9) Section 17-96-101 et seq., regarding podiatrists;

(10) Section 17-97-101 et seq., regarding psychologists and psychological examiners; or

(11) Section 17-100-101 et seq., regarding speech-language pathologists and audiologists.

(b) Any person who submits evidence of having maintained employment in the State of Arkansas for the past twelve (12) months and of successfully completing a criminal history check within the last twelve (12) months shall not be required to apply for a criminal history check under this subchapter.

History. Acts 1997, No. 990, § 11; 1999, No. 1122, § 5; 2001, No. 1710, § 3.

Amendments. The 2001 amendment deleted (a)(12) and former (b), and red-

esignated the remaining subsection as present (b); and deleted "or in accordance with that person's professional license" preceding "shall not be" in present (b).

20-33-212. Effective date — Criminal history checks for incumbent operators and employees.

(a) Operators licensed, ElderChoices providers seeking to provide care, and employees hired on and after October 1, 1997, shall apply for criminal records checks.

(b) Criminal history checks shall be obtained for all operators, ElderChoices providers, and employees by October 1, 2000, and each licensing or requesting agency shall promulgate a rule that prescribes how criminal history checks for incumbent operators, ElderChoices providers, and employees will be phased in during the period prior to October 1, 2000. The rule shall require:

(1) Operators to apply for criminal history checks in conjunction with the deadline for the operator to seek renewal of the qualified entity's license from the licensing agency;

(2) Incumbent employees to apply for criminal history checks in the same manner as applicants for employment in conjunction with the employee's anniversary of employment or any time before that date; and

(3) ElderChoices providers to apply for criminal history checks prior to providing care.

History. Acts 1997, No. 990, § 12;
1999, No. 1409, § 8.

CHAPTER 34

INDEPENDENT INSPECTIONS OF MODULAR BUILDING FOR CODE COMPLIANCE

SECTION.

20-34-101. Inspections — Reports —
Costs.

20-34-101. Inspections — Reports — Costs.

(a)(1) A manufacturer of modular or factory-built structures, other than manufactured housing that is governed by the Department of Housing and Urban Development, certified to do business in the State of Arkansas may contract with an independent third-party compliance assurance or inspection agency that is listed with the International Accreditation Service, Inc., for the inspection of modular or factory-built buildings destined for delivery within the state for compliance with the Arkansas Fire Protection Code and applicable state and municipal electrical, plumbing, and mechanical codes.

(2) If a manufacturer of modular or factory-built buildings contracts with an independent third-party inspector to monitor compliance with the Arkansas Fire Protection Code and applicable state and municipal electrical, plumbing, and mechanical codes relating to the construction of new buildings, no further inspection by state or local building officials may be required for that part of the structure built in the factory.

(b) A copy of the third-party inspector's inspection report shall accompany the building to the construction site for review.

(c) The cost of the independent third-party inspection shall be borne by the modular building manufacturer.

History. Acts 2001, No. 1182, § 1;
2005, No. 885, § 1.

A.C.R.C. Notes. The reference to the Arkansas Fire Protection Code is an apparent reference to the Fire Prevention Act, § 12-13-101 et seq.

Amendments. The 2005 amendment inserted the present subdivision designations in (a); and, in (a)(1), substituted "certified to do business" for "located" and "International Accreditation" for "National Evaluation."

CHAPTER 35

GENETIC RESEARCH STUDIES NONDISCLOSURE ACT

SECTION.

20-35-101. Title.

20-35-102. Definitions.

SECTION.

20-35-103. Nondisclosure.

20-35-101. Title.

This chapter shall be known and may be cited as the “Genetic Research Studies Nondisclosure Act”.

History. Acts 2001, No. 1251, § 1.

RESEARCH REFERENCES

UALR L.J. Survey of Legislation, 2001 Arkansas General Assembly, Practice, Procedure, and Courts, 24 UALR L.J. 523. Survey of Legislation, 2001 Arkansas General Assembly, Public Health and Welfare, 24 UALR L.J. 557.

20-35-102. Definitions.

As used in this chapter, “genetic research study or studies” means those genetic research studies approved by an institutional review board as defined in 21 C.F.R., Part 50, as it existed on January 1, 2001, or conducted subject to the requirements of the federal common rule at 21 C.F.R., Part 50 and Part 56, and 45 C.F.R., Part 46, as it existed on January 1, 2001.

History. Acts 2001, No. 1251, § 2; substituted “Part” for “Act” throughout 2005, No. 1962, § 90.

Amendments. The 2005 amendment

20-35-103. Nondisclosure.

(a) No research records of individual subjects in genetic research studies shall be:

(1) Subject to subpoena or discovery in civil suits, except in cases in which the information in the records is the basis of the suit; or

(2) Disclosed to employers or health insurers without the informed, written consent of the individual.

(b)(1) All stored tissues, including blood, that arise from surgery, other diagnostic or therapeutic steps, or autopsy may be disclosed for genetic or other research studies, if:

(A) The patient’s name or social security number is not attached to or included with the specimen; or

(B) The patient’s name or social security number is attached to or included with the specimen and the patient has given informed written consent to the disclosure.

(2) Informed written consent shall not be included in a section of the consent for treatment, admission to a hospital or clinic, or permission for an autopsy.

(c)(1) It shall be permissible to publish or otherwise use the results of genetic research studies for research or educational purposes if no individual subject is identified.

(2) If specific informed consent from the individual has been obtained in writing, the individual may be identified.

History. Acts 2001, No. 1251, § 3.

CHAPTER 36

ARKANSAS BIOLOGICAL AGENT REGISTRY ACT

SECTION.

20-36-101. Purpose.

20-36-102. Definitions.

20-36-103. Duties.

SECTION.

20-36-104. Penalty.

20-36-105. Funding.

Effective Dates. Acts 2003, No. 1080, § 2: Apr. 3, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Department of Health shall establish and administer a program for the registration of biological agents to protect the health and safety of the residents of the State of Arkansas and that this act is immediately necessary because of the imminent threat caused by these biological agents to the people of Arkansas.

Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

20-36-101. Purpose.

(a) The Division of Health of the Department of Health and Human Services shall establish and administer a program for the registration of biological agents.

(b) The biological agent registry shall identify the biological agents possessed and maintained by any person in this state and shall contain other information required under rules adopted by the division.

History. Acts 2003, No. 1080, § 1.

20-36-102. Definitions.

As used in this chapter:

(1) "Biological agent" means:

(A) Any select agent that is a microorganism, virus, bacterium, fungus, rickettsia, or toxin listed in 42 C.F.R. pt. 72 app. A, as in effect on January 1, 2003;

(B) Any genetically modified microorganisms or genetic elements from an organism within 42 C.F.R. pt. 72 app. A, as in effect on

January 1, 2003, shown to produce or encode for a factor associated with a disease; or

(C) Any genetically modified microorganisms or genetic elements that contain nucleic acid sequences coding for any of the toxins listed within 42 C.F.R. pt 72 app. A, as in effect on January 1, 2003, or their toxic submits;

(2) "Division" means the Division of Health of the Department of Health and Human Services; and

(3) "Person" means any association, business, corporation, facility, firm, individual, institution of higher education, organization, partnership, society, state agency, or other legal entity.

History. Acts 2003, No. 1080, § 1.

20-36-103. Duties.

(a)(1) The Division of Health of the Department of Health and Human Services shall adopt rules for the implementation of the biological agent registry program as follows:

(A) Determining and listing the biological agents required to be reported under this section;

(B) Designating persons required to make reports and specific information required to be reported, including time limits for reporting, form of reports, and to whom reports shall be submitted;

(C) Providing for the release of information in the registry to state and federal law enforcement agencies and the United States Centers for Disease Control and Prevention under a communicable disease investigation commenced or conducted by the division or other state or federal law enforcement agencies having investigatory authority, or in connection with any investigation involving release, theft, or loss of biological agents;

(D) Establishing a system of safeguards that requires persons possessing and maintaining biological agents subject to this section to comply with the same federal standards that apply to persons registered to possess the same agents under federal law; and

(E) Establishing a process for persons that possess and maintain biological agents to alert appropriate authorities of unauthorized possession or attempted possession of biological agents.

(2) The rules shall designate appropriate authorities for receipt of alerts from these persons.

(b) Any person that possesses and maintains any biological agent required to be reported under this section shall report to the division the information required for inclusion in the biological agent registry.

(c)(1) Except as otherwise provided in this section, information prepared for or maintained in the registry under this section shall be confidential and shall not be a public record under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(2) The division may release information contained in the registry for the purpose of conducting or aiding in a communicable disease investigation.

(3) The division shall cooperate with and may share information contained in the registry with the United States Centers for Disease Control and Prevention and state and federal law enforcement agencies in any investigation involving the release, theft, or loss of a biological agent required to be reported under this section.

(4) Release of information from the registry as authorized under this subsection shall not render the information released a public record under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(5) Release of information from the registry as authorized under this subsection also shall not render the information prepared for or maintained in the registry a public record under the Freedom of Information Act of 1967, § 25-19-101 et seq.

History. Acts 2003, No. 1080, § 1.

20-36-104. Penalty.

(a)(1) The Division of Health of the Department of Health and Human Services shall impose a civil penalty for a willful or knowing violation of this section in the amount of up to one thousand dollars (\$1,000).

(2) Each day of a continuing violation shall be a separate offense.

(b) Any person wishing to contest a penalty shall be entitled to an administrative hearing in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 2003, No. 1080, § 1.

20-36-105. Funding.

(a) In order for the Division of Health of the Department of Health and Human Services to fully perform the duties outlined in § 20-36-103, the division shall diligently pursue funding for bioterrorism and for the biological agent registry.

(b) The division's administration of this registry program is subject to adequate and available funding in which to fully meet the requirements of this chapter.

History. Acts 2003, No. 1080, § 1.

CHAPTER 37

LEGISLATIVE HEALTH ADEQUACY COMMITTEE

SECTION.

20-37-101. Findings — Purpose.

20-37-102. Legislative Health Adequacy
Committee.

SECTION.

20-37-103. Duties.

20-37-104. Funding.

20-37-105. Expiration.

Effective Dates. Acts 2003, No. 1816, § 3: became law without Governor's signature, May 6, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Joint Committee on Educational Adequacy must report its findings by September 1, 2003; that health care adequacy among school age children in Arkansas is an essential component of any definition of educational adequacy; that the initial reports of the Health Adequacy Committee created by this act must be available to the Joint Committee on Edu-

cational Adequacy before the formulation of the final report. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

20-37-101. Findings — Purpose.

(a) The General Assembly finds that:

(1) Adequate health care for school-age children is an important component in maximizing their educational opportunities and classroom performance so that children may obtain an adequate education; and

(2) There is a need for a study to be conducted to evaluate health care for school-age children and to develop a strategic statewide plan regarding the needs and solutions to health problems of school-age children.

(b) The purposes of this chapter are to:

(1) Create a committee to conduct a study to evaluate health care for school-age children; and

(2) Develop findings and make recommendations to the Joint Committee on Educational Adequacy, the House Interim Committee on Public Health, Welfare, and Labor, the Senate Interim Committee on Public Health, Welfare, and Labor, the General Assembly, and the Governor.

History. Acts 2003, No. 1816, § 1.

20-37-102. Legislative Health Adequacy Committee.

(a)(1) There is established the Legislative Health Adequacy Committee consisting of twenty-two (22) members.

(2) The following members shall be appointed by the Chair of the House Interim Committee on Public Health, Welfare, and Labor and the Chair of the Senate Interim Committee on Public Health, Welfare, and Labor:

(A) One (1) member who is a pediatrician;

(B) One (1) member who is a school nurse currently working in a public elementary school in this state;

(C) One (1) member who is a school nurse currently working in a public junior high school or high school in this state;

(D) One (1) member who is currently practicing dentistry in this state;

(E) One (1) member who is currently working as a classroom teacher in a public elementary school in this state and who is a member of the Arkansas Education Association;

(F) One (1) member to represent the Arkansas Minority Health Commission;

(G) One (1) member to represent the community health agencies; and

(H) Two (2) members each of whom has a child in a public school in this state.

(3) The Speaker of the House of Representatives shall appoint one (1) member currently working as a principal of a public elementary school.

(4) The President Pro Tempore of the Senate shall appoint one (1) member currently working as a teacher in a public elementary school.

(5) The Director of the Division of Health of the Department of Health and Human Services shall nominate to the Chair of the House Interim Committee on Public Health, Welfare, and Labor and the Chair of the Senate Interim Committee on Public Health, Welfare, and Labor:

(A) One (1) member to represent the Division of Health of the Department of Health and Human Services;

(B) One (1) member to represent the Arkansas Academy of Pediatrics;

(C) One (1) member to represent the Arkansas Academy of Family Practice;

(D) One (1) member to represent the College of Public Health of the University of Arkansas for Medical Sciences;

(E) One (1) member to represent the Arkansas Center for Health Improvement; and

(F) One (1) member to represent the Arkansas Advocates for Children and Families.

(6) The Commissioner of Education shall nominate to the Chair of the House Interim Committee on Public Health, Welfare, and Labor and the Chair of the Senate Interim Committee on Public Health, Welfare, and Labor:

(A) One (1) member to represent the Department of Education;

(B) One (1) member to represent the Arkansas School Nurses Association;

(C) One (1) member to represent the Arkansas Association of Educational Administrators; and

(D) One (1) member to represent the Arkansas Parent Teacher Association.

(7) The Department of Health and Human Services shall nominate to the Chair of the House Interim Committee on Public Health, Welfare, and Labor and the Chair of the Senate Interim Committee on Public Health, Welfare, and Labor one (1) member to represent the ARKids First program.

(b)(1) The Chair of the House Interim Committee on Public Health, Welfare, and Labor and the Chair of the Senate Interim Committee on

Public Health, Welfare, and Labor shall appoint a chair for the Legislative Health Adequacy Committee.

(2) The Chair of the House Interim Committee on Public Health, Welfare, and Labor and the Chair of the Senate Interim Committee on Public Health, Welfare, and Labor shall call the first meeting within thirty (30) days of the appointments by them.

(3) The Legislative Health Adequacy Committee shall select from its membership a secretary and treasurer.

(c)(1) Any position on the Legislative Health Adequacy Committee for which no nomination or appointment has been made by May 15, 2004, or within fifteen (15) business days of June 3, 2004, shall be filled by appointment by the Chair of the House Interim Committee on Public Health, Welfare, and Labor and the Chair of the Senate Interim Committee on Public Health, Welfare, and Labor.

(2) A majority vote of those members present shall be required for any action of the Legislative Health Adequacy Committee.

(d) [Deleted.]

(e) Vacancies shall be filled for the unexpired portion of the term in the same manner as is provided in this section for initial appointments.

(f) The Legislative Health Adequacy Committee shall meet at least monthly.

(g)(1) The Bureau of Legislative Research shall furnish reasonable staff assistance to the Legislative Health Adequacy Committee.

(2) The Arkansas Center for Health Improvement, the Division of Health of the Department of Health and Human Services, the State Board of Education, and any other state agencies shall upon request assist the Legislative Health Adequacy Committee and provide the Legislative Health Adequacy Committee with necessary resources and information to carry out the purposes of this chapter.

(h) Members of the Legislative Health Adequacy Committee shall serve without pay but may receive expense reimbursement in accordance with § 25-16-902, if funds are available for that purpose.

History. Acts 2003, No. 1816, § 1; 2003 (2nd Ex. Sess.), No. 51, § 1.

Amendments. The 2003 (2nd Ex. Sess.) amendment substituted "Chair of the House Interim Committee on Public Health, Welfare, and Labor and the Chair of the Senate Interim Committee on Public Health, Welfare, and Labor" for "Joint Committee on Educational Adequacy by a majority of a quorum" at the end of (a)(2), present (a)(5) and (b)(2); added (a)(2)(H); deleted former (a)(5) and (a)(6) and redesignated the remaining subdivisions ac-

cordingly; substituted "Chair of the House Interim Committee on Public Health, Welfare, and Labor and the Chair of the Senate Interim Committee on Public Health, Welfare, and Labor" for "Joint Committee on Educational Adequacy" in (a)(6), (a)(7), (b)(1), and present (c)(1); deleted former (b) and redesignated former (c) and (d) as present (b) and (c); substituted "chair" for "chairperson" in (b)(2); and, in (c)(1), substituted "May 15, 2004" for "May 15, 2003" and "June 3, 2004" for "May 6, 2003."

20-37-103. Duties.

(a) The Legislative Health Adequacy Committee shall:

(1) Study and evaluate the health care needs of the school-age children of Arkansas to obtain an adequate education;

(2) Study and evaluate health programs in the schools and their effectiveness in allowing students to obtain an adequate education, including, but not limited to, school nurse programs;

(3) Study and evaluate whether children are receiving adequate health care and correction of health problems while in school;

(4) Study and evaluate the effects of inadequate health on the performance of children in the classroom in obtaining an adequate education or equal educational opportunity, or both;

(5) Develop a strategic statewide plan to ensure adequate health care of school-age children while in the classroom to obtain an adequate education; and

(6) Develop a strategic statewide plan so that school-age children can become more responsible in making preventative decisions regarding their health and thus increase educational opportunity.

(b) By September 1, 2004, the committee shall report its initial findings and strategic plan for meeting the health needs of school-age children to the House Interim Committee on Public Health, Welfare, and Labor, the Senate Interim Committee on Public Health, Welfare, and Labor, and the Governor.

History. Acts 2003, No. 1816, § 1; 2003 (2nd Ex. Sess.), No. 51, § 2.

Amendments. The 2003 (2nd Ex. Sess.) amendment, in (b), substituted

“2004” for “2003” and deleted “the Joint Committee on Educational Adequacy”; and deleted former (c).

20-37-104. Funding.

(a)(1) The Legislative Health Adequacy Committee’s funding shall be from grants, donations, and any other funds that may be made available through appropriations by the General Assembly.

(2) Moneys received by the committee shall be used solely for the support of the functions of the committee.

(b)(1) Grants and donations received by the committee shall be cash funds and shall be administered by the Division of Health of the Department of Health and Human Services but shall be subject to appropriation by the General Assembly.

(2) The division shall disburse moneys from the Health Adequacy Committee Fund at the direction of the committee.

(3) Any moneys received from grantors and donors that are not expended by the committee shall be returned to the grantors and donors in proportion that each bears to the total of all grants and donations received by the committee.

History. Acts 2003, No. 1816, § 1.

20-37-105. Expiration.

The Legislative Health Adequacy Committee shall expire on December 31, 2007.

History. Acts 2003, No. 1816, § 1;
2005, No. 2261, § 1.

Amendments. The 2005 amendment
substituted "2007" for "2005."

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Air ambulance service.

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Ambulance services.

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Artist.

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By-product material.

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Cardiac arrest.

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Automated external defibrillator,
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Emergency medical services.

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Care.

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emergency medical technicians,
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Category II-A hospital.

Radiation protection, §20-21-203.

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Category II-B hospital.

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Cats.

Rabies control, §20-19-302.

Cemetery.

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Cemetery company.

Perpetually maintained cemeteries,
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Certificate.

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Certification.

Criminal background checks for
emergency medical technicians,
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Certified applicator.

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Certified fire department.

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Certifying agency.

Criminal background checks for
emergency medical technicians,
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Chief executive officer.

Nuclear planning and response grants,
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Child.

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Chiropractor.

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Civil penalty.

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Class A license.

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Home health care services, §20-10-801.

Clock hour.

Long-term care facilities and services,
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Code.

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Columbarium.

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Commence construction.

Health services agency, §20-8-109.

Commercial applicator.

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Commercial medical waste.

Disposal, §20-32-101.

Commercial user.

Children's product safety, §20-27-1602.

Community public water system,

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Congregate services.

Unlicensed long-term care facilities,
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Construct.

Health and human services
department.

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Construction fund.

Public health laboratory, §20-7-403.

Contraceptives procedures.

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Contraceptives supplies.

Family planning, §20-16-303.

Contractor.

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Conversion of services.

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Conveyance.

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escalators, §20-24-101.

Cooperative agreement.

Nuclear planning and response grants,
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Court.

Putative father registry, §20-18-701.

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- Do not resuscitate orders,
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Crib.

- Children's product safety, §20-27-1602.

Critical items.

- Swimming pools, §20-30-101.

Critical systems.

- Long-term care facilities and administrators, §20-10-1802.

Crypt.

- Cemeteries, §20-17-1002.

Custodial service.

- Long-term care facilities, protection of residents, §20-10-1202.

Date of filing.

- Vital statistics, §20-18-102.

Day shift.

- Long-term care facilities and administrators, §20-10-1401.

Dead body.

- Vital statistics, §20-18-102.

Dead fetus.

- Disposition of human tissue,
§20-17-801.

Dealer.

- Manufactured home standards,
§20-25-102.

Decedent.

- Anatomical gifts, §20-17-601.

Declaration.

- Death with dignity, §20-17-201.

Decommissioning.

- Radiation protection, §20-21-203.

Defibrillation.

- Automated external defibrillator,
§20-13-1303.

Deficiency.

- Long-term care facilities and administrators, §20-10-1902.

Deficiency tag number.

- Long-term care facilities and administrators, §20-10-1902.

Defoliant.

- Pesticides, §20-20-203.

Demolition.

- Asbestos removal, §20-27-1003.

Dental radiographic unit.

- Radiation protection, §20-21-203.

Desiccant pesticides, §20-20-203.**Determination.**

- Criminal background checks,
§20-33-201.

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- Handicapped persons.
- Early intervention program for infants and toddlers,
§20-14-502.

Diagnostic mammography,

- §20-15-1002.

Direct-care staff.

- Long-term care facilities and administrators, §20-10-1401.

Disaster locations.

- Vaccination of first responders,
§20-13-1201.

Distribute.

- Pesticides, §20-20-203.

Distributor.

- Fireworks, §20-22-701.

Division of EMS and trauma systems.

- Criminal background checks for emergency medical technicians,
§20-13-1101.

Document of gift.

- Anatomical gifts, §20-17-601.

Dogs.

- Rabies control, §20-19-302.

Donor.

- Anatomical gifts, §20-17-601.

Do not resuscitate identification.

- Emergency medical services,
§20-13-901.

Dormant elevator, dumbwaiter or escalator, §20-24-101.**Dumbwaiter,** §20-24-101.**Dwelling.**

- Lead poisoning prevention, §20-27-602.

Dwelling unit.

- Lead poisoning prevention, §20-27-602.

Early intervention services.

- Handicapped infants and toddlers,
§20-14-502.

Elderly.

- Criminal background checks,
§20-33-202.

Electrical facilities.

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Electrical work.

- Electrical code, §20-31-102.

Electrician.

- Electrical code, §20-31-102.

Electronic products.

- Radiation protection, §20-21-303.

Elevator, §20-24-101.**Embryo.**

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Long-term care facilities and services,
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Emergency medical care, §20-9-309.**Emergency medical providers,**
§20-9-309.**Emergency medical services,**
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Automated external defibrillator,
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Do not resuscitate protocol,
§20-13-901.

**Emergency medical services do not
resuscitate order, §20-13-901.****Emergency medical services
personnel.**

Do not resuscitate orders, §20-13-901.

Emergency medical services system.

Criminal background checks for
emergency medical technicians,
§20-13-1101.

Emergency medical technician,
§20-13-202.

Criminal background checks for
emergency medical technicians,
§20-13-1101.

Emergency request.

Poison control, drug information and
toxicological laboratory services,
§20-13-503.

Emergency sample.

Toxicology laboratory services,
§20-13-503.

Employee.

Criminal background checks,
§20-33-201.

Enucleator.

Anatomical gifts, §20-17-601.

Environment.

Pesticides, §20-20-203.

Equipment.

Pesticides, §20-20-203.

Escalator, §20-24-101.**Estate.**

Death with dignity, §20-17-201.

Evening shift.

Long-term care facilities and
administrators, §20-10-1401.

Existing facility.

Long-term care facilities and
administrators, §20-10-1802.

Explosives.

Blasting, §20-27-1302.

Exposed surface.

Lead poisoning prevention, §20-27-602.

External inspection.

Boiler inspections, §20-23-101.

DEFINED TERMS —Cont'd**External member of the human
body.**

Disposition of human tissue,
§20-17-801.

Fabricator.

Safety glazing materials, §20-27-901.

Facilities.

Asbestos removal, §20-27-1003.

Long-term care facilities and
administrators, §20-10-1802.

Long-term care facilities and services,
§20-10-903.

Medical waste disposal, §20-32-101.

Failure to perform.

Nuclear planning and response grants,
§20-21-501.

Father.

Putative father registry, §20-18-701.

Federal act.

Long-term care facilities and services,
§20-10-213.

Fee revenues.

Public health laboratory, §20-7-403.

Fees.

Health and human services
department building and local
grants, §20-7-202.

Public health laboratory, §20-7-403.

Felt.

Bedding, §20-27-201.

Fetal death.

Vital statistics, §20-18-102.

Fetus.

Human cloning, §20-16-1001.

File.

Vital statistics, §20-18-102.

Final disposition.

Burials, §20-17-102.

Vital statistics, §20-18-102.

Fire department.

Fire protection services, §20-22-802.

Firefighter.

Fire protection services, §20-22-802.

Fire mitigation.

Comprehensive fire protection,
§20-22-1003.

Fire prevention.

Comprehensive fire protection,
§20-22-1003.

Fire protection sprinkler system.

Fire extinguishers, §20-22-602.

Fire services.

Comprehensive fire protection,
§20-22-1003.

Fire sprinkler systems inspectors.

Fire extinguishers, §20-22-602.

DEFINED TERMS —Cont'd**Fire training.**

Comprehensive fire protection,
§20-22-1003.

Firm.

Fire extinguishers, §20-22-602.

First responders.

Vaccination of first responders,
§20-13-1201.

**Fixed fire extinguisher systems,
§20-22-602.****Follow-up care.**

Newborn hearing, screening, tracking
and intervention, §20-15-1502.

Follow-up screening.

Newborn hearing, screening, tracking
and intervention, §20-15-1502.

**Free-standing birthing center,
§20-9-401.****Freight elevator, §20-24-101.****Friable asbestos material.**

Asbestos removal, §20-27-1003.

Full-size crib.

Children's product safety, §20-27-1602.

Fungus.

Pesticides, §20-20-203.

**Gas chromatograph and x-ray
fluorescence devices.**

Radiation protection, §20-21-203.

General license.

Radiation protection, §20-21-203.

Generator.

Medical waste disposal, §20-32-101.

Genetic research studies, §20-35-102.**Gestational age.**

Unborn child pain awareness and
prevention act, §20-16-1102.

Women's right to know act,
§20-16-902.

Gross receipts.

Long-term care facilities and
administrators, §20-10-1601.

Grounds.

Smoking at medical facilities,
§20-27-705.

Habitual violation.

Long-term care facilities and services.
Receivership, §20-10-903.

Hand elevators, §20-24-101.**Has been bitten.**

Rabies control, §20-19-302.

Hazardous locations.

Safety glazing materials, §20-27-901.

Head injury, §20-14-702.

Long-term care facilities and services,
§20-10-101.

DEFINED TERMS —Cont'd**Head injury retraining and
rehabilitation.**

Long-term care facilities and services,
§20-10-101.

Health care facilities.

Emergency medical services.
Do not resuscitate orders,
§20-13-901.

Health care provider.

Death with dignity, §20-17-201.
HIV shield law, §20-15-905.

Health care proxy.

Death with dignity, §20-17-201.

Health facility.

Health services agency, §20-8-101.
HIV shield law, §20-15-905.

Health spa.

Automated external defibrillators,
§20-13-1306.

Hearing loss.

Newborn hearing, screening, tracking
and intervention, §20-15-1502.

Hearing screening.

Newborn hearing, screening, tracking
and intervention, §20-15-1502.

High-level radioactive waste.

Radiation protection, §20-21-203.

High-risk area.

Needlestick safety and prevention,
§20-9-311.

HIV.

Shield law, §20-15-905.

HIV test.

Shield law, §20-15-905.

**Home health care services,
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